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THE PRINCIPLES OF Moral AND Political PHILOSOPHY.

BY
WILLIAM PALEY, *D.D.*

The Fourth American, from the Twelfth Engliſh, Edition.

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TO

THE RIGHT REVEREND

Edmund Law, *D. D.*

LORD BISHOP OF CARLISLE.

MY LORD,

HAD the obligations which I owe to your Lordſhip's kindneſs been much leſs, or much fewer, than they are; had perſonal gratitude left any place in my mind for deliberation or for inquiry; in ſelecting a name which every reader might confeſs to be prefixed with propriety to a work, that, in many of its parts, bears no obſcure relation to the general principles of natural and revealed religion, I ſhould have found myſelf directed by many conſiderations to that of the Biſhop of Carliſle. A long life ſpent in the moſt intereſting of all human purſuits, the inveſtigation of moral and religious truth, in conſtant and unwearied endeavours to advance the diſcovery, communication and ſucceſs of both; a life ſo occupied, and arrived at that period which renders every life venerable, commands reſpect by a title, which no virtuous mind will diſpute, which no mind ſenſible of the importance of theſe ſtudies to the ſupreme concernments of mankind will not rejoice to ſee acknowledged. Whatever difference, or whatever oppoſition, ſome who peruſe your Lordſhip's writings may perceive between your concluſions and their own, the good and wiſe of all perſuaſions will revere that induſtry, which has for its object the illuſtration or defence of our common Chriſtianity. Your Lordſhip's reſearches have never loſt ſight of one purpoſe, namely, to recover the ſimplicity of the goſpel from beneath that load of unauthorized additions, which the ignorance of ſome ages, and the learning of others, the ſuperſtition of weak, and the craft of deſigning men, have (unhappily for its intereſt) heaped upon it. And this purpoſe, I am convinced, was dictated by the pureſt motive; by a firm, and I think a juſt opinion, that whatever renders religion more rational, renders it more credible; that he who, by a diligent and faithful examination of the original records, diſmiſſes from the ſyſtem one article which contradicts the apprehenſion, the experience, or the reaſoning of mankind, does more towards recommending the belief, and, with the belief, the influence of Chriſtianity, to the underſtandings and conſciences of ſerious inquirers, and through them to univerſal reception and authority, than can be effected by a thouſand contenders for creeds and ordinances of human eſtabliſhment.

When the doctrine of tranſubſtantiation had taken poſſeſſion of the Chriſtian world, it was not without the induſtry of learned men that it came at length to be diſcovered, that no ſuch doctrine was contained in the New Teſtament. But had thoſe excellent perſons done nothing more by their diſcovery, than aboliſhed an innocent ſuperſtition, or changed ſome directions in the ceremonial of public worſhip, they had merited little of that veneration, with which the gratitude of Proteſtant churches remembers their ſervices. What they did for mankind was this: they exonerated Chriſtianity of a weight which ſunk it. If indolence or timidity had checked theſe exertions, or ſuppreſſed the fruit and publication of theſe inquiries, is it too much to affirm, that infidelity would at this day have been univerſal?

I do not mean, my Lord, by the mention of this example, to inſinuate, that any popular opinion which your Lordſhip may have encountered, ought to be compared with tranſubſtantiation, or that the aſſurance with which we reject that extravagant abſurdity is attainable in the controverſies in which your Lordſhip has been engaged: but I mean, by calling to mind thoſe great reformers of the public faith, to obſerve, or rather to expreſs my own perſuaſion, that to reſtore the purity, is moſt effectually to promote the progreſs of Chriſtianity; and that the ſame virtuous motive which hath ſanctified their labours, ſuggeſted yours. At a time when ſome men appear not to perceive any good, and others to ſuſpect an evil tendency, in that ſpirit of examination and reſearch which is gone forth in Chriſtian countries, this teſtimony is become due not only to the probity of your Lordſhip's views, but to the general cauſe of intellectual and religious liberty.

That your Lordſhip's life may be prolonged in health and honour, that it may continue to afford an inſtructive proof how ſerene and eaſy old age can be made by the memory of important and well intended labours, by the poſſeſſion of public and deſerved eſteem, by the preſence of many grateful relatives; above all, by the reſources of religion, by an unſhaken confidence in the deſigns of a "faithful Creator," and a ſettled truſt in the truth and in the promiſes of Chriſtianity, is the fervent prayer of, my Lord,

Your Lordſhip's dutiful,
Moſt obliged,
And moſt devoted Servant,

WILLIAM PALEY.

CARLISLE, *Feb.* 10, 1785.

PREFACE.

IN the treatiſes that I have met with upon the ſubject of *morals*, I appear to myſelf to have remarked the following imperfections—either that the principle was erroneous, or that it was indiſtinctly explained, or that the rules deduced from it were not ſufficiently adapted to real life and to actual ſituations. The writings of Grotius, and the larger work of Puffendorff, are of too *forenſic* a caſt, too much mixed up with civil law and with the juriſprudence of Germany, to anſwer preciſely the deſign of a ſyſtem of ethics—the direction of private conſciences in the general conduct of human life. Perhaps, indeed, they are not to be regarded as inſtitutes of morality calculated to inſtruct an individual in his duty, ſo much as a ſpecies of law books and law authorities, ſuited to the practice of thoſe courts of juſtice, whoſe deciſions are regulated by general principles of natural equity, in conjunction with the maxims of the Roman code: of which kind, I underſtand, there are many upon the Continent. To which may be added, concerning both theſe authors, that they are more occupied in deſcribing the rights and uſages of independent communities, than is neceſſary in a work which profeſſes, not to adjuſt the correſpondence of nations, but to delineate the offices of domeſtic life. The profuſion alſo of claſſical quotations with which many of their pages abound, ſeems to me a fault from which it will not be eaſy to excuſe them. If theſe extracts be intended as decorations of ſtyle, the compoſition is overloaded with ornaments of one kind. To any thing more than ornament they can make no claim. To propoſe them as ſerious arguments; gravely to attempt to eſtabliſh or fortify a moral duty by the teſtimony of a Greek or Roman poet, is to trifle with the attention of the reader, or rather to take it off from all juſt principles of reaſoning in morals.

Of our own writers in this branch of philoſophy, I find none that I think perfectly free from the three objections which I have ſtated. There is likewiſe a fourth property obſervable almoſt in all of them, namely, that they divide too much of the law of nature from the precepts of revelation; ſome authors induſtriouſly declining the mention of ſcripture authorities, as belonging to a different province; and others reſerving them for a ſeparate volume: which appears to me much the ſame defect, as if a commentator on the laws of England ſhould content himſelf with ſtating upon each head the common law of the land, without taking any notice of acts of parliament; or ſhould chooſe to give his readers the common law in one book, and the ſtatute law in another. "When the obligations of morality are taught," ſays a pious and celebrated writer, "let the ſanctions of Chriſtianity never be forgotten: by which it will be ſhewn that they give ſtrength and luſtre to each other: religion will appear to be the voice of reaſon, and morality will be the will of God."*

The *manner* alſo in which modern writers have treated of ſubjects of morality, is in my judgment liable to much exception. It has become of late a faſhion to deliver moral inſtitutes in ſtrings or ſeries of detached propoſitions, without ſubjoining a continued argument or regular diſſertation to any of them. This ſententious, apothegmatizing ſtyle, by crowding propoſitions and paragraphs too faſt upon the mind, and by carrying the eye of the reader from ſubject to ſubject in too quick a ſucceſſion, gains not a ſufficient hold upon the attention, to leave either the memory furniſhed, or the underſtanding ſatisfied. However uſeful a ſyllabus of topics or a ſeries of propoſitions may be in the hands of a lecturer, or as a guide to a ſtudent, who is ſuppoſed to conſult other books, or to inſtitute upon each ſubject reſearches of his own, the method is by no means convenient for ordinary readers; becauſe few readers are ſuch *thinkers* as to want only a hint to ſet their thoughts at work upon; or ſuch as will pauſe and tarry at every propoſition, till they have traced out its dependency, proof, relation, and conſequences, before they permit themſelves to ſtep on to another. A reſpectable writer of this claſs† has compriſed his doctrine of ſlavery in the three following propoſitions:

"No one is born a ſlave, becauſe every one is born with all his original rights."

"No one can become a ſlave, becauſe no one from being a perſon can, in the language of the Roman law, become a thing, or ſubject of property."

"The ſuppoſed property of the maſter in the ſlave, therefore, is matter of uſurpation, not of right."

It may be poſſible to deduce from theſe few adages ſuch a theory of the primitive rights of human nature, as will evince the illegality of ſlavery; but ſurely an author requires too much of his reader, when he expects him to make theſe deductions for himſelf; or to ſupply, perhaps from ſome remote chapter of the ſame treatiſe, the ſeveral proofs and explanations which are neceſſary to render the meaning and truth of theſe aſſertions intelligible.

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* Preface to The Preceptor, by Dr. Johnſon.

† Dr. Ferguſon, author of "Inſtitutes of Moral Philoſophy," 1767.

There is a fault, the oppoſite of this, which ſome moraliſts who have adopted a different, and I think a better plan of compoſition, have not always been careful to avoid; namely, the dwelling upon verbal and elementary diſtinctions with a labour and prolixity proportioned much more to the ſubtlety of the queſtion, than to its value and importance in the proſecution of the ſubject. A writer upon the law of nature*, whoſe explications in every part of philoſophy, though always diffuſe, are often very ſucceſsful, has employed three long ſections in endeavouring to prove that "permiſſions are not laws." The diſcuſſion of this controverſy, however eſſential it might be to dialectic preciſion, was certainly not neceſſary to the progreſs of a work deſigned to deſcribe the duties and obligations of civil life. The reader becomes impatient when he is detained by diſquiſitions which have no other object than the ſettling of terms and phraſes; and, what is worſe, they for whoſe uſe ſuch books are chiefly intended, will not be perſuaded to read them at all.

I am led to propoſe theſe ſtrictures, not by any propenſity to depreciate the labours of my predeceſſors, much leſs to invite a compariſon between the merits of their performances and my own; but ſolely by the conſideration, that when a writer offers a book to the public, upon a ſubject on which the public are already in poſſeſſion of many others, he is bound by a kind of literary juſtice to inform his readers, diſtinctly and ſpecifically, what it is he profeſſes to ſupply, and what he expects to improve. The imperfections above enumerated are thoſe which I have endeavoured to avoid or remedy. Of the execution the reader muſt judge: but this was the deſign.

Concerning the *principle* of morals it would be premature to ſpeak; but concerning the manner of unfolding and explaining that principle, I have ſomewhat which I wiſh to be remarked. An experience of nine years in the office of a public tutor in one of the univerſities, and in that department of education to which theſe chapters relate, afforded me frequent occaſions to obſerve, that, in diſcourſing to young minds upon topics of morality, it required much more pains to make them percieve the difficulty, than to underſtand the ſolution; that, unleſs the ſubject was ſo drawn up to a point, as to exhibit the full force of an objection, or the exact place of a doubt, before any explanation was entered upon—in other words, unleſs ſome curioſity was excited before it was attempted to be ſatisfied, the labour of the teacher was loſt. When information was not deſired, it was ſeldom, I found, retained. I have made this obſervation my guide in the following work: that is, upon each occaſion I have endeavoured, before I ſuffered myſelf to proceed in the diſquiſition, to put the reader in complete poſſeſſion of the queſtion; and to do it in the way that I thought moſt likely to ſtir up his own doubts and ſolicitude about it.

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* Dr. Rutherforth, author of "Inſtitutes of Natural Law."

In purſuing the principle of morals through the detail of caſes to which it is applicable, I have had in view to accommodate both the choice of the ſubjects, and the manner of handling them, to the ſituations which ariſe in the life of an inhabitant of this country, in theſe times. This is the thing that I think to be principally wanting in former treatiſes; and perhaps the chief advantage which will be found in mine. I have examined no doubts, I have diſcuſſed no obſcurities, I have encountered no errors, I have adverted to no controverſies, but what I have ſeen actually to exiſt. If ſome of the queſtions treated of appear to a more inſtructed reader minute or puerile, I deſire ſuch reader to be aſſured that I have found them occaſions of difficulty to young minds; and what I have obſerved in young minds, I ſhould expect to meet with in all who approach theſe ſubjects for the firſt time. Upon each article of human duty, I have combined with the concluſions of reaſon the declarations of ſcripture, when they are to be had, as of co-ordinate authority, and as both terminating in the ſame ſanctions.

In the *manner* of the work, I have endeavoured ſo to attemper the oppoſite plans above animadverted upon, as that the reader may not accuſe me either of too much haſte, or too much delay. I have beſtowed upon each ſubject enough of diſſertation to give a body and ſubſtance to the chapter in which it is treated of, as well as coherence and perſpicuity: on the other hand, I have ſeldom, I hope, exerciſed the patience of the reader by the length and prolixity of my eſſays, or diſappointed that patience at laſt by the tenuity and unimportance of the concluſion.

There are two particulars in the following work for which it may be thought neceſſary that I ſhould offer ſome excuſe. The firſt of which is, that I have ſcarcely ever referred to any other book, or mentioned the name of the author whoſe thoughts, and ſometimes, poſſibly, whoſe very expreſſions I have adopted. My method of writing has conſtantly been this; to extract what I could from my own ſtores and my own reflections in the firſt place; to put down that; and afterwards to conſult upon each ſubject ſuch readings as fell in my way: which order, I am convinced, is the only one whereby any perſon can keep his thoughts from ſliding into other men's trains. The effect of ſuch a plan upon the production itſelf will be, that, whilſt ſome parts in matter or manner may be new, others will be little elſe than a repetition of the old. I make no pretenſions to perfect originality: I claim to be ſomething more than a mere compiler. Much no doubt is borrowed; but the fact is, that the notes for this work having been prepared for ſome years, and ſuch things having been from time to time inſerted in them as appeared to me worth preſerving, and ſuch inſertions made commonly without the name of the author from whom they were taken, I ſhould, at this time, have found a difficulty in recovering theſe names with ſufficient exactneſs to be able to render to every man his own. Nor, to ſpeak the truth, did it appear to me worth while to repeat the ſearch merely for this purpoſe. When authorities are relied upon, names muſt be produced: when a diſcovery has been made in ſcience, it may be unjuſt to borrow the invention without acknowledging the author. But in an argumentative treatiſe, and upon a ſubject which allows no place for diſcovery or invention, properly ſo called; and in which all that can belong to a writer is his mode of reaſoning, or his judgment of probabilities; I ſhould have thought it ſuperfluous, had it been eaſier to me than it was, to have interrupted my text, or crowded my margin, with references to every author whoſe ſentiments I have made uſe of. There is, however, one work, to which I owe ſo much, that it would be ungrateful not to confeſs the obligation: I mean the writings of the late Abraham Tucker, Eſq. part of which were publiſhed by himſelf, and the remainder ſince his death, under the title of "The Light of Nature purſued, by Edward Search, Eſq." I have found in this writer more original thinking and obſervation upon the ſeveral ſubjects that he has taken in hand, than in any other, not to ſay, than in all others put together. His talent alſo for illuſtration is unrivalled. But his thoughts are diffuſed through a long, various, and irregular work. I ſhall account it no mean praiſe, if I have been ſometimes able to diſpoſe into method, to collect into heads and articles, or to exhibit in more compact and tangible maſſes, what, in that otherwiſe excellent performance, is ſpread over too much ſurface.

The next circumſtance for which ſome apology may be expected, is the joining of moral and political philoſophy together, or the addition of a book of politics to a ſyſtem of ethics. Againſt this objection, if it be made one, I might defend myſelf by the example of many approved writers, who have treated *de officiis hominis et civis*, or, as ſome chooſe to expreſs it, "of the rights and obligations of man, in his individual and ſocial capacity," in the ſame book. I might allege, alſo, that the part a member of the commonwealth ſhall take in political contentions, the vote he ſhall give, the counſels he ſhall approve, the ſupport he ſhall afford, or the oppoſition he ſhall make, to any ſyſtem of public meaſures—is as much a queſtion of perſonal duty, as much concerns the conſcience of the individual who deliberates, as the determination of any doubt which relates to the conduct of private life; that conſequently political philoſophy is, properly ſpeaking, a continuation of moral philoſophy; or rather indeed a part of it, ſuppoſing moral philoſophy to have for its aim the information of the human conſcience in every deliberation that is likely to come before it. I might avail myſelf of theſe excuſes, if I wanted them; but the vindication upon which I rely is the following. In ſtating the principle of morals, the reader will obſerve that I have employed ſome induſtry in explaining the theory, and ſhewing the neceſſity of *general rules;* without the full and conſtant conſideration of which, I am perſuaded that no ſyſtem of moral philoſophy can be ſatisfactory or conſiſtent. This foundation being laid, or rather this habit being formed, the diſcuſſion of political ſubjects, to which, more than to almoſt any other, general rules are applicable, became clear and eaſy. Whereas, had theſe topics been aſſigned to a diſtinct work, it would have been neceſſary to have repeated the ſame rudiments, to have eſtabliſhed over again the ſame principles, as thoſe which we had already exemplified, and rendered familiar to the reader, in the former parts of this. In a word, if there appear to any one too great a diverſity, or too wide a diſtance, between the ſubjects treated of in the courſe of the preſent volume, let him be reminded, that the doctrine of general rules pervades and connects the whole.

It may not be improper, however, to admoniſh the reader, that, under the name of *politics*, he is not to look for thoſe occaſional controverſies, which the occurrences of the preſent day, or any temporary ſituation of public affairs, may excite; and moſt of which, if not beneath the dignity, it is beſide the purpoſe of a philoſophical inſtitution to advert to. He will perceive that the ſeveral diſquiſitions are framed with a reference to the condition of this country, and of this government: but it ſeemed to me to belong to the deſign of a work like the following, not ſo much to diſcuſs each altercated point with the particularity of a political pamphlet upon the ſubject, as to deliver thoſe univerſal principles, and to exhibit that mode and train of reaſoning in politics, by the due application of which every man might be enabled to attain to juſt concluſions of his own.

I am not ignorant of an objection that has been advanced againſt all abſtract ſpeculations concerning the origin, principle, or limitation of civil authority; namely, that ſuch ſpeculations poſſeſs little or no influence upon the conduct either of the ſtate or of the ſubject, of the governors or the governed; nor are attended with any uſeful conſequences to either; that in times of tranquillity they are not wanted; in times of confuſion they are never heard. This repreſentation however, in my opinion, is not juſt. Times of tumult, it is true, are not the times to learn; but the choice which men make of their ſide and party, in the moſt critical occaſions of the commonwealth, may nevertheleſs depend upon the leſſons they have received, the books they have read, and the opinions they have imbibed, in ſeaſons of leiſure and quietneſs. Some judicious perſons, who were preſent at Geneva during the troubles which lately convulſed that city, thought they perceived, in the contentions there carrying on, the operation of that political theory, which the writings of Rouſſeau, and the unbounded eſteem in which theſe writings are held by his countrymen, had diffuſed amongſt the people. Throughout the political diſputes that have within theſe few years taken place in Great Britain, in her ſiſter kingdom, and in her foreign dependencies, it was impoſſible not to obſerve, in the language of party, in the reſolutions of popular meetings, in debate, in converſation, in the general ſtrain of thoſe fugitive and diurnal addreſſes to the public which ſuch occaſions call forth, the prevalency of thoſe ideas of civil authority which are diſplayed in the works of Mr. Locke. The credit of that great name, the courage and liberality of his principles, the ſkill and clearneſs with which his arguments are propoſed, no leſs than the weight of the arguments themſelves, have given a reputation and currency to his opinions, of which I am perſuaded, in any unſettled ſtate of public affairs, the influence would be felt. As this is not a place for examining the truth or tendency of theſe doctrines, I would not be underſtood, by what I have ſaid, to expreſs any judgment concerning either. I only mean to remark, that ſuch doctrines are not without effect; and that it is of *practical* importance to have the principles from which the obligations of ſocial union, and the extent of civil obedience are derived, rightly explained and well underſtood. Indeed, as far as I have obſerved, in political, beyond all other ſubjects, where men are without ſome fundamental and ſcientific principles to reſort to, they are liable to have their underſtandings played upon by cant phraſes and unmeaning terms, of which every party in every country poſſeſs a vocabulary. We appear aſtoniſhed when we ſee the multitude led away by ſounds; but we ſhould remember, that, if ſounds work miracles, it is always upon ignorance. The influence of names is in exact proportion to the want of knowledge.

Theſe are the obſervations with which I have judged it expedient to prepare the attention of my reader. Concerning the perſonal motives which engaged me in the following attempt, it is not neceſſary that I ſay much; the nature of my academical ſituation, a great deal of leiſure ſince my retirement from it, the recommendation of an honoured and excellent friend, the authority of the venerable prelate to whom theſe labours are inſcribed, the not perceiving in what way I could employ my time or talents better, and my diſapprobation in literary men of that faſtidious indolence which ſits ſtill becauſe it diſdains to do *little*, were the conſiderations that directed my thoughts to this deſign. Nor have I repented of the undertaking. Whatever be the fate or reception of this work, it owes its author nothing. In ſickneſs and in health I have found in it that which can alone alleviate the one, or give enjoyment to the other—occupation and engagement.

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BOOK I.

Preliminary Considerations.

Chapter I.

DEFINITION AND USE OF THE SCIENCE.

MORAL PHILOSOPHY, Morality, Ethics, Caſuiſtry, Natural Law, mean all the ſame thing; namely, *That Science which teaches men their duty, and the reaſons of it.*

The uſe of ſuch a ſtudy depends upon this, that, without it, the rules of life, by which men are ordinarily governed, oftentimes miſlead them, through a defect either in the rule, or in the application.

Theſe rules are, the Law of Honour, the Law of the Land, and the Scriptures.

Chapter II.

THE LAW OF HONOUR.

THE Law of Honour is a ſyſtem of rules conſtructed by people of faſhion, and calculated to facilitate their intercourſe with one another; and for no other purpoſe.

Conſequently, nothing is adverted to by the Law of Honour, but what tends to incommode this intercourſe.

Hence, this law only preſcribes and regulates the duties *betwixt equals ;* omitting ſuch as relate to the Supreme Being, as well as thoſe which we owe to our inferiors.

For which reaſon, profaneneſs, neglect of public worſhip or private devotion, cruelty to ſervants, rigorous treatment of tenants or other dependants, want of charity to the poor, injuries done to tradeſmen by inſolvency or delay of payment, with numberleſs examples of the ſame kind, are accounted no breaches of honour ; becauſe a man is not a leſs agreeable companion for theſe vices, nor the worſe to deal with, in thoſe concerns which are uſually tranſacted between one gentleman and another.

Again, the Law of Honour being conſtituted by men occupied in the purſuit of pleaſure, and for the mutual conveniency of ſuch men, will be found, as might be expected from the character and deſign of the law-makers, to be, in moſt inſtances, favourable to the licentious indulgence of the natural paſſions.

Thus it allows of fornication, adultery, drunkenneſs, prodigality, duelling, and of revenge in the extreme ; and lays no ſtreſs upon the virtues oppoſite to theſe.

Chapter III.

THE LAW OF THE LAND.

THAT part of mankind who are beneath the Law of Honour, often make the Law of the Land the rule of life ; that is, they are ſatisfied with themſelves, ſo long as they do or omit nothing, for the doing or omitting of which the Law can puniſh them.

Whereas every ſyſtem of human Laws, conſidered as a rule of life, labours under the two following defects:

I. Human Laws omit many duties, as not objects of compulſion; ſuch as piety to God, bounty to the poor, forgiveneſs of injuries, education of children, gratitude to benefactors.

The Law never ſpeaks but to command, nor commands but where it can compel; conſequently thoſe duties, which by their nature muſt be *voluntary*, are left out of the ſtatute-book, as lying beyond the reach of its operation and authority.

II. Human Laws permit, or, which is the ſame thing, ſuffer to go unpuniſhed, many crimes, becauſe they are incapable of being defined by any previous deſcription—Of which nature is luxury, prodigality, partiality in voting at thoſe elections in which the qualification of the candidate ought to determine the ſucceſs, caprice in the diſpoſition of men's fortunes at their death, diſreſpect to parents, and a multitude of ſimilar examples.

For this is the alternative; either the Law muſt define beforehand and with preciſion the offences which it puniſhes, or it muſt be left to the *diſcretion* of the magiſtrate to determine upon each particular accuſation, whether it conſtitutes that offence which the Law deſigned to puniſh, or not; which is in effect leaving to the magiſtrate to puniſh or not to puniſh, at his pleaſure, the individual who is brought before him; which is juſt ſo much tyranny. Where, therefore, as in the inſtances above-mentioned, the diſtinction between right and wrong is of too ſubtile, or of too ſecret a nature, to be aſcertained by any preconcerted language, the law of moſt countries, eſpecially of free ſtates, rather than commit the liberty of the ſubject to the diſcretion of the magiſtrate, leaves men in ſuch caſes to themſelves.

Chapter IV.

THE SCRIPTURES.

WHOEVER expects to find in the Scriptures a ſpecific direction for every moral doubt that ariſes, looks for more than he will meet with. And to what a magnitude ſuch a detail of particular precepts would have enlarged the ſacred volume, may be partly underſtood from the following conſideration. The laws of this country, including the acts of the legiſlature and the deciſions of our ſupreme courts of juſtice, are not contained in fewer than fifty folio volumes; and yet it is not once in ten attempts that you can find the caſe you look for, in any law-book whatever; to ſay nothing of thoſe numerous points of conduct, concerning which the law profeſſes not to preſcribe or determine any thing. Had then the ſame particularity, which obtains in human laws ſo far as they go, been attempted in the Scriptures, throughout the whole extent of morality, it is manifeſt, they would have been by much too bulky to be either read or circulated; or rather, as St. John ſays, "even the world itſelf could not contain the books that ſhould be written."

Morality is taught in Scripture in this wiſe. General rules are laid down of piety, juſtice, benevolence, and purity: ſuch as worſhipping God in ſpirit and in truth; doing as we would be done by; loving our neighbour as ourſelf; forgiving others, as we expect forgiveneſs from God; that mercy is better than ſacrifice; that not that which entereth into a man (nor, by parity of reaſon, any ceremonial pollutions) but that which proceedeth from the heart, defileth him. Theſe rules are occaſionally illuſtrated, either by *fictitious examples*, as in the parable of the good Samaritan; and of the cruel ſervant, who refuſed to his fellow-ſervant that indulgence and compaſſion which his maſter had ſhewn to him: *or in inſtances which actually preſented themſelves*, as in Chriſt's reproof of his diſciples at the Samaritan village; his praiſe of the poor widow, who caſt in her laſt mite; his cenſure of the Phariſees who choſe out the chief rooms—and of the tradition, whereby they evaded the command to ſuſtain their indigent parents: *or laſtly, in the reſolution of queſtions, which thoſe who were about our Saviour propoſed to him*, as in his anſwer to the young man who aſked him, "What lack I yet?" and to the honeſt ſcribe who had found out, even in that age and country, that "to love God and his neighbour was more than all whole burnt-offerings and ſacrifice."

And this is in truth the way in which all practical ſciences are taught, as Arithmetic, Grammar, Navigation, and the like. Rules are laid down, and examples are ſubjoined; not that theſe examples are the caſes, much leſs all the caſes which will actually occur, but by way only of explaining the principle of the rule, and as ſo many ſpecimens of the method of applying it. The chief difference is, that the examples in Scripture are not annexed to the rules with the didactic regularity to which we are now-a-days accuſtomed, but delivered diſperſedly, as particular occaſions ſuggeſted them; which gave them, however, eſpecially to thoſe who heard them, and were preſent to the occaſions which produced them, an energy and perſuaſion, much beyond what the ſame or any inſtances would have appeared with, in their places in a ſyſtem.

Beſide this, the Scriptures commonly preſuppoſe, in the perſons to whom they ſpeak, a knowledge of the principles of natural juſtice; and are employed not ſo much to teach *new* rules of morality, as to enforce the practice of it by *new* ſanctions, and by a *greater certainty*: which laſt ſeems to be the proper buſineſs of a revelation from God, and what was moſt wanted.

Thus the “unjuſt, covenant breakers, and extortioners,” are condemned in Scripture, ſuppoſing it known, or leaving it, where it admits of doubt, to moraliſts to determine, what injuſtice, extortion, or breach of covenant, is.

The above conſiderations are intended to prove that the Scriptures do not ſuperſede the uſe of the ſcience of which we profeſs to treat, and at the ſame time to acquit them of any charge of imperfection or inſufficiency on that account.

Chapter V.

THE MORAL SENSE.

“THE father of *Caius Toranius* had been proſcribed by the triumvirate. *Caius Toranius*, coming over to the intereſts of that party, diſcovered to the officers, who were in purſuit of his father's life, the place where he concealed himſelf, and gave them withal a deſcription, by which they might diſtinguiſh his perſon when they found him. The old man, more anxious for the ſafety and fortunes of his ſon, than about the little that might remain of his own life, began immediately to inquire of the officers who ſeized him, whether his ſon was well, whether he had done his duty to the ſatisfaction of his generals. That ſon, replied one of the officers, ſo dear to thy affections, betrayed thee to us; by his information thou art apprehended, and dieſt. The officer with this ſtruck a poniard to his heart, and the unhappy parent fell, not ſo much affected by his fate, as by the means to which he owed it.”[*]

[*] “Caius Toranius triumvirum partes ſecutus, proſcripti patris uti prætorii et ornati viri latebras, ætatem notaſque corporis, quibus agnoſci poſſet, centurionibus edidit, qui eum perſecuti ſunt. Senex de filii magis vita, et incrementis, quam de reliquo ſpiritu ſuo ſollicitus; an incolumis eſſet, et an imperatoribus ſatisfaceret, interrogare eos cœpit. Equibus unus: ab illo, inquit, quem tantopere diligis, demonſtratus, noſtro miniſtreio, filii indicio occideris;

Now the queſtion is, whether, if this ſtory were related to the wild boy, caught ſome years ago in the woods of Hanover, or to a ſavage without experience, and without inſtruction, cut off in his infancy from all intercourſe with his ſpecies, and conſequently, under no poſſible influence of example, authority, education, ſympathy, or habit; whether, I ſay, ſuch a one would feel, upon the relation, any degree of *that ſentiment of diſapprobation of Toranius' conduct* which we feel, or not.

They who maintain the exiſtence of a moral ſenſe—of innate maxims—of a natural conſcience—that the love of virtue and hatred of vice are inſtinctive—or the perception of right and wrong intuitive (all which are only different ways of expreſſing the ſame opinion) affirm that he would.

They who deny the exiſtence of a moral ſenſe, &c. affirm that he would not.

And, upon this, iſſue is joined.

As the experiment has never been made, and from the difficulty of procuring a ſubject (not to mention the impoſſibility of propoſing the queſtion to him, if we had one) is never likely to be made, what would be the event, can only be judged of from probable reaſons.

Thoſe who contend for the affirmative, obſerve, that we approve examples of generoſity, gratitude, fidelity, &c. and condemn the contrary, inſtantly, without deliberation, without having any intereſt of our own concerned in them; ofttimes without being conſcious of, or able to give, any reaſon for our approbation; that this approbation is uniform and univerſal; the ſame ſorts of conduct being approved or diſapproved in all ages and countries of the world—circumſtances, ſay they, which ſtrongly indicate the operation of an inſtinct or moral ſenſe.

protinuſque pectus ejus gladio trajecit. Collapſus itaque eſt infelix, auctore cædis, quam ipſa cæde, miſerior."

Valer. Max. Lib. IX. Cap. 11.

On the other hand, anſwers have been given to moſt of theſe arguments, by the patrons of the oppoſite ſyſtem: and,

Firſt, as to the *uniformity* above alleged, they controvert the fact. They remark, from authentic accounts of hiſtorians and travellers, that there is ſcarcely a ſingle vice, which in ſome age or country of the world has not been countenanced by public opinion; that in one country it is eſteemed an office of piety in children to ſuſtain their aged parents, in another to diſpatch them out of the way; that ſuicide in one age of the world, has been heroiſm, is in another felony; that theft, which is puniſhed by moſt laws, by the laws of Sparta was not unfrequently rewarded; that the promiſcuous commerce of the ſexes, although condemned by the regulations and cenſure of all civilized nations, is practiſed by the ſavages of the tropical regions, without reſerve, compunction, or diſgrace; that crimes, of which it is no longer permitted us even to ſpeak, have had their advocates among the ſages of very renowned times; that, if an inhabitant of the poliſhed nations of Europe is delighted with the appearance, wherever he meets with it, of happineſs, tranquillity, and comfort, a wild American is no leſs diverted with the writhings and contortions of a victim at the ſtake; that even amongſt ourſelves, and in the preſent improved ſtate of moral knowledge, we are far from a perfect conſent in our opinions or feelings; that you ſhall hear duelling alternately reprobated and applauded, according to the ſex, age, or ſtation of the perſon you converſe with; that the forgiveneſs of injuries and inſults is accounted by one ſort of people magnanimity, by another, meanneſs; that in the above inſtances, and perhaps in moſt others, moral approbation follows the faſhions and inſtitutions of the country we live in; which faſhions alſo, and inſtitutions themſelves, have grown out of the exigencies, the climate, ſituation, or local circumſtances of the country; or have been ſet up by the authority of an arbitrary chieftain, or the unaccountable caprice of the multitude —all which, they obſerve, looks very little like the ſteady hand and indelible characters of nature. But,

Secondly, becauſe, after theſe exceptions and abatements, it cannot be denied, but that ſome ſorts of actions command and receive the eſteem of mankind more than others; and that the approbation of them is general, though not univerſal: as to this they ſay, that the general approbation of virtue, even in inſtances where we have no intereſt of our own to induce us to it, may be accounted for, without the aſſiſtance of a moral ſenſe: thus,

"Having experienced, in ſome inſtance, a particular conduct to be beneficial to ourſelves, or obſerved that it would be ſo, a ſentiment of approbation riſes up in our minds, which ſentiment afterwards accompanies the idea or mention of the ſame conduct, although the private advantage which firſt excited it no longer exiſt."

And this continuance of the paſſion, after the reaſon of it has ceaſed, is nothing more, ſay they, than what happens in other caſes; eſpecially in the love of money, which is in no perſon ſo eager, as it is oftentimes found to be in a rich old miſer, without family to provide for, or friend to oblige by it, and to whom conſequently it is no longer, (and he may be ſenſible of it too) of any real uſe or value: yet is this man as much overjoyed with gain, and mortified by loſſes, as he was the firſt day he opened his ſhop, and when his very ſubſiſtence depended upon his ſucceſs in it.

By theſe means, the cuſtom of approving certain actions *commenced;* and when once ſuch a cuſtom hath got footing in the world, it is no difficult thing to explain how it is tranſmitted and continued; for *then* the greateſt part of thoſe who approve of virtue, approve of it from authority, by imitation, and from a habit of approving ſuch and ſuch actions, inculcated in early youth, and receiving, as men grow up, continual acceſſions of ſtrength and vigour, from cenſure and encouragement, from the books they read, the converſations they hear, the current application of epithets, the general turn of language, and the various other cauſes, by which it univerſally comes to paſs, that a ſociety of men, touched in the feebleſt degree with the ſame paſſion, ſoon communicate to one another a great degree of it.* This is the caſe with moſt of us at preſent; and is the cauſe alſo, that the *proceſs of aſſociation*, deſcribed in the laſt paragraph but one, is little now either perceived or wanted.

Amongſt the cauſes aſſigned for the continuance and diffuſion of the ſame moral ſentiments amongſt mankind, we have mentioned *imitation*. The efficacy of this principle is moſt obſervable in children; indeed, if there be any thing in them which deſerves the name of an *inſtinct*, it is their *propenſity to imitation*. Now there is nothing which children imitate or apply more readily than expreſſions of affection and averſion, of approbation, hatred, reſentment, and the like; and when theſe paſſions and expreſſions are once connected, which they ſoon will be by the ſame aſſociation which unites words with their ideas, the paſſion will follow the expreſſion, and attach upon the object to which the child has been accuſtomed to apply the epithet. In a word, when almoſt every thing elſe is learned by *imitation*, can we wonder to find the ſame cauſe concerned in the generation of our moral ſentiments?

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* "From inſtances of popular tumults, ſeditions, factions, panics, and of all paſſions, which are ſhared with a multitude, we may learn the influence of ſociety in exciting and ſupporting any emotion; while the moſt ungovernable diſorders are raiſed we find by that means, from the ſlighteſt and moſt frivolous occaſions. He muſt be more or leſs than man, who kindles not in the common blaze. What wonder, then, that moral ſentiments are found of ſuch influence in life, though ſpringing from principles, which may appear, at firſt ſight, ſomewhat ſmall and delicate?"

Hume's Inquiry concerning the Principles of Morals, Sect. IX. *p.* 326.

Another conſiderable objection to the ſyſtem of moral inſtinct is this, that there are no maxims in the ſcience, which can well be deemed *innate*, as none perhaps can be aſſigned, which are abſolutely and univerſally *true;* in other words, which do not *bend* to circumſtances. Veracity, which ſeems, if any be, a natural duty, is excuſed in many caſes, towards an enemy, a thief, or a madman. The obligation of promiſes, which is a firſt principle in morality, depends upon the circumſtances under which they were made: they may have been unlawful, or become ſo ſince, or inconſiſtent with former promiſes, or erroneous, or extorted; under all which caſes, inſtances may be ſuggeſted, where the obligation to perform the promiſe would be very dubious, and ſo of moſt other general rules, when they come to be actually applied.

An argument has alſo been propoſed on the ſame ſide of the queſtion of this kind. Together with the inſtinct, there muſt have been implanted, it is ſaid, a clear and preciſe idea of the object upon which it was to attach. The inſtinct and the idea of the object are inſeparable even in imagination, and as neceſſarily accompany each other as any correlative ideas whatever; that is, in plainer terms, if we be prompted by nature to the approbation of particular actions, we muſt have received alſo from nature a diſtinct conception of the action we are thus prompted to approve; which we certainly have not received.

But as this argument bears alike againſt all inſtincts, and againſt their exiſtence in brutes as well as in men, it will hardly, I ſuppoſe, produce conviction, though it may be difficult to find an anſwer to it.

Upon the whole, it ſeems to me, either that there exiſt no ſuch inſtincts as compoſe what is called the moral ſenſe, or that they are not now to be diſtinguiſhed from prejudices and habits; on which account they cannot be depended upon in moral reaſoning: I mean that it is not a ſafe way of arguing, to aſſume certain principles as ſo many dictates, impulſes and inſtincts of nature, and to draw concluſions from theſe principles, as to the rectitude or wrongneſs of actions, independent of the tendency of ſuch actions, or of any other conſideration whatever.

Ariſtotle lays down, as a fundamental and ſelf-evident maxim, that nature intended barbarians to be ſlaves; and proceeds to deduce from this maxim a train of concluſions, calculated to juſtify the policy which then prevailed. And I queſtion whether the ſame maxim be not ſtill ſelf-evident to the company of merchants trading to the coaſt of Africa.

Nothing is ſo ſoon made as a maxim; and it appears from the example of *Ariſtotle*, that authority and convenience, education, prejudice, and general practice, have no ſmall ſhare in the making of them; and that the laws of cuſtom are very apt to be miſtaken for the order of nature.

For which reaſon, I ſuſpect, that a ſyſtem of morality, built upon inſtincts, will only find out reaſons and excuſes for opinions and practices already eſtabliſhed—will ſeldom correct or reform either.

But farther, ſuppoſe we admit the exiſtence of theſe inſtincts, what, it may be aſked, is their authority? No man, you ſay, can act in deliberate oppoſition to them, without a ſecret remorſe of conſcience. But this remorſe may be borne with—and if the ſinner chooſe to bear with it, for the ſake of the pleaſure or profit which he expects from his wickedneſs; or finds the pleaſure of the ſin to exceed the remorſe of conſcience, of which he alone is the judge, and concerning which, when he feels them both together, he can hardly be miſtaken, the moral-inſtinct-man, ſo far as I can underſtand, has nothing more to offer.

For, if he allege, that theſe inſtincts are ſo many indications of the will of God, and conſequently preſages of what we are to look for hereafter; this, I anſwer, is to reſort to a rule and a motive, ulterior to the inſtincts themſelves, and at which rule and motive we ſhall by and by arrive by a ſurer road—I ſay *ſurer*, ſo long as there remains a controverſy whether there be any inſtinctive maxims at all; or any difficulty in aſcertaining what maxims are inſtinctive.

This celebrated queſtion, therefore, becomes in our ſyſtem a queſtion of pure curioſity; and as ſuch we diſmiſs it to the determination of thoſe who are more inquiſitive, than we are concerned to be, about the natural hiſtory and conſtitution of the human ſpecies.

Chapter VI.

HUMAN HAPPINESS.

THE word *happy* is a relative term; that is, when we call a man happy, we mean that he is happier than ſome others, with whom we compare him; than the generality of others; or than he himſelf was in ſome other ſituation: thus, ſpeaking of one who has juſt compaſſed the object of a long purſuit, "now," we ſay, "he is happy;" and in a like comparative ſenſe, compared, that is, with the general lot of mankind, we call a man happy who poſſeſſes health and competency.

In ſtrictneſs, any condition may be denominated happy, in which the amount or aggregate of pleaſure exceeds that of pain; and the degree of happineſs depends upon the quantity of this exceſs.

And the greateſt quantity of it ordinarily attainable in human life, is what we mean by happineſs, when we inquire or pronounce what human happineſs conſiſts in.*

* If any *poſitive* ſignification, diſtinct from what we mean by pleaſure, can be affixed to the term "happineſs," I ſhould take in to denote a certain ſtate

In which inquiry I will omit much uſual declamation upon the dignity and capacity of our nature; the ſuperiority of the ſoul to the body, of the rational to the animal part of our conſtitution; upon the worthineſs, refinement and delicacy of ſome ſatisfactions, or the meanneſs, groſſneſs and ſenſuality of others; becauſe I hold that pleaſures differ in nothing, but in continuance and intenſity; from a juſt computation of which, confirmed by what we obſerve of the apparent cheerfulneſs, tranquillity, and contentment, of men of different taſtes, tempers, ſtations, and purſuits, every queſtion concerning human happineſs muſt receive its deciſion.

It will be our buſineſs to ſhow, if we can,

I. What human happineſs does not conſiſt in;

II. What it does conſiſt in.

FIRST then, Happineſs does not conſiſt in the pleaſures of ſenſe, in whatever profuſion or variety they be enjoyed. By the pleaſures of ſenſe I mean, as well the animal gratifications of eating, drinking, and that by which the ſpecies is continued, as the more refined pleaſures of muſic, painting, architecture, gardening, ſplendid ſhews, theatric exhibitions, and

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of the nervous ſyſtem in that part of the human frame in which we feel joy and grief, paſſions and affections. Whether this part be the heart, which the turn of moſt languages would lead us to believe; or the diaphragm, as Buffon; or the upper orifice of the ſtomach, as Van Helmont thought; or rather be a kind of fine net-work, lining the whole region of the precordia, as others have imagined; it is poſſible, not only that each painful ſenſation may violently ſhake and diſturb the fibres at the time, but that a ſeries of ſuch may at length ſo derange the very texture of the ſyſtem, as to produce a perpetual irritation, which will ſhew itſelf by fretfulneſs, impatience, and reſtleſſneſs. It is poſſible alſo, on the other hand, that a ſucceſſion of pleaſurable ſenſations may have ſuch an effect upon this ſubtile organization, as to cauſe the fibres to relax, and return into their place and order, and thereby to recover, or, if not loſt, to preſerve that harmonious conformation which gives to the mind its ſenſe of complacency and ſatisfaction. This ſtate may be denominated happineſs, and is ſo far diſtinguiſhable from pleaſure, that it does not refer to any particular object of enjoyment, or conſiſt, like pleaſure, in the gratification of one or more of the ſenſes, but is rather the ſecondary effect which ſuch objects and gratifications produce upon the nervous ſyſtem, or the ſtate in which they leave it. Theſe conjectures belong not, however, to our province. The comparative ſenſe, in which we have explained the term, happineſs, is more popular, and is ſufficient for the purpoſe of the preſent Chapter.

the pleaſures, laſtly, of active ſports, as of hunting, ſhooting, fiſhing, &c. For,

1ſt, Theſe pleaſures continue but a little while at a time. This is true of them all, eſpecially of the groſſer ſort of them. Laying aſide the preparation and the expectation, and computing ſtrictly the actual ſenſation, we ſhall be ſurpriſed to find, how inconſiderable a portion of our time they occupy, how few hours in the four and twenty they are able to fill up.

2dly, Theſe pleaſures, by repetition, loſe their reliſh. It is a property of the machine, for which we know no remedy, that the organs, by which we perceive pleaſure, are blunted and benumbed, by being frequently exerciſed in the ſame way. There is hardly any one who has not found the difference between a gratification, when new, and when familiar; or any pleaſure, which does not become indifferent as it grows habitual.

3dly, The eagerneſs for high and intenſe delights takes away the reliſh from all others; and as ſuch delights fall rarely in our way, the greater part of our time becomes from this cauſe empty and uneaſy.

There is hardly any deluſion by which men are greater ſufferers in their happineſs, than by their expecting too much from what is called pleaſure; that is, from thoſe intenſe delights, which vulgarly engroſs the name of pleaſure. The very expectation ſpoils them. When they do come, we are often engaged in taking pains to perſuade ourſelves how much we are pleaſed, rather than enjoying any pleaſure which ſprings naturally out of the object. And whenever we depend upon being vaſtly delighted, we always go home ſecretly grieved at miſſing our aim. Likewiſe, as hath been obſerved juſt now, when this humour of being prodigiouſly delighted has once taken hold of the imagination, it hinders us from providing for, or acquieſcing in thoſe gently ſoothing engagements, the due variety and ſucceſſion of which, are the only things that ſupply a continued ſtream of happineſs.

What I have been able to obſerve of that part of mankind, whoſe profeſſed purſuit is pleaſure, and who are withheld in the purſuit by no reſtraints of fortune, or ſcruples of conſcience, correſponds ſufficiently with this account. I have commonly remarked, in ſuch men, a reſtleſs and inextinguiſhable paſſion for variety; a great part of their time to be vacant, and ſo much of it irkſome; and that, with whatever eagerneſs and expectation they ſet out, they become, by degrees, faſtidious in their choice of pleaſure, languid in the enjoyment, yet miſerable under the want of it.

The truth ſeems to be, that there is a limit, at which the pleaſures ſoon arrive, and from which they ever afterwards decline. They are by neceſſity of ſhort duration, as the organs cannot hold on their emotions beyond a certain length of time; and if you endeavour to compenſate for the imperfection in their nature, by the frequency with which you repeat them, you loſe more than you gain, by the fatigue of the faculties, and the diminution of ſenſibility.

We have ſaid nothing in this account of the loſs of opportunities, or the decay of faculties, which, whenever they happen, leave the voluptuary deſtitute and deſperate; teaſed by deſires that can never be gratified, and the memory of pleaſures which muſt return no more.

It will alſo be allowed by thoſe who have experienced it, and perhaps by thoſe alone, that pleaſure which is purchaſed by the incumbrance of our fortune, is purchaſed too dear: the pleaſure never compenſating for the perpetual irritation of embarraſſed circumſtances.

Theſe pleaſures, after all, have their value: and as the young are always too eager in their purſuit of them, the old are ſometimes too remiſs; that is, too ſtudious of their eaſe, to be at the pains for them, which they really deſerve.

Secondly, Neither does happineſs conſiſt in an exemption from pain, labour, care, buſineſs, ſuſpenſe, moleſtation, and "thoſe evils which are without;" ſuch a ſtate being uſually attended not with eaſe, but with depreſſion of ſpirits, a taſteleſſneſs in all our ideas, imaginary anxieties, and the whole train of hypochondriacal affections.

For which reaſon, it ſeldom anſwers the expectations of thoſe, who retire from their ſhops and counting-houſes, to enjoy the remainder of their days in leiſure and tranquillity; much leſs of ſuch, as in a fit of chagrin, ſhut themſelves up in cloiſters and hermitages, or quit the world and their ſtations in it, for ſolitude and repoſe.

Where there exiſts a known external cauſe of uneaſineſs, the cauſe may be removed, and the uneaſineſs will ceaſe. But thoſe imaginary diſtreſſes which men feel for want of real ones (and which are equally tormenting, and ſo far equally real) as they depend upon no ſingle or aſſignable ſubject of uneaſineſs, admit ofttimes of no application or relief.

Hence a moderate pain, upon which the attention may faſten and ſpend itſelf, is to many a refreſhment; as a fit of the gout will ſometimes cure the ſpleen. And the ſame of any leſs violent agitation of the mind, as a literary controverſy, a law-ſuit, a conteſted election, and, above all, gaming; the paſſion for which, in men of fortune and liberal minds, is only to be accounted for on this principle.

Thirdly, Neither does happineſs conſiſt in greatneſs, rank or elevated ſtation.

Were it true that all ſuperiority afforded pleaſure, it would follow, that, by how much we were the greater, that is, the more perſons we were ſuperior to, in the ſame proportion, ſo far as depended upon this cauſe, we ſhould be the happier; but ſo it is, that no ſuperiority yields any ſatisfaction, ſave that which we poſſeſs or obtain over thoſe with whom we immediately compare ourſelves. The ſhepherd perceives no pleaſure in his ſuperiority over his dog; the farmer in his ſuperiority over the ſhepherd; the lord in his ſuperiority over the farmer; nor the king, laſtly, in his ſuperiority over the lord. Superiority, where there is no competition, is ſeldom contemplated; what moſt men indeed are quite unconſcious of.

But if the ſame ſhepherd can run, fight, or wreſtle better than the peaſants of his village; if the farmer can ſhow better cattle, if he keep a better horſe, or be ſuppoſed to have a longer purſe than any farmer in the hundred; if the lord have more intereſt in an election, greater favour at court, a better houſe, or larger eſtate than any nobleman in the country; if the king poſſeſs a more extenſive territory, a more powerful fleet or army, a more ſplendid eſtabliſhment, more loyal ſubjects, or more weight and authority, in adjuſting the affairs of nations, than any prince in Europe: in all theſe caſes the parties feel an actual ſatisfaction in their ſuperiority.

Now the concluſion that follows from hence is this—that the pleaſures of ambition, which are ſuppoſed to be peculiar to high ſtations, are in reality common to all conditions. The farrier who ſhoes a horſe better, and who is in greater requeſt for his ſkill than any man within ten miles of him, poſſeſſes, for all that I can ſee, the delight of diſtinction and of excelling, as truly and ſubſtantially as the ſtateſman, the ſoldier, and the ſcholar, who have filled Europe with the reputation of their wiſdom, their valour, or their knowledge.

No ſuperiority appears to be of any account, but ſuperiority over a rival. This, it is manifeſt, may exiſt wherever rivalſhips do; and rivalſhips fall out amongſt men of all ranks and degrees. The object of emulation, the dignity or magnitude of this object, makes no difference; as it is not what either poſſeſſes that conſtitutes the pleaſure, but what one poſſeſſes more than the other.

Philoſophy ſmiles at the contempt with which the rich and great ſpeak of the petty ſtrifes and competitions of the poor; not reflecting that theſe ſtrifes and competitions are juſt as reaſonable as their own, and the pleaſure, which ſucceſs affords, the ſame.

Our poſition is, that happineſs does not conſiſt in greatneſs. And this poſition we make out by ſhewing, that even what are ſuppoſed to be the peculiar advantages of greatneſs, the pleaſures of ambition and ſuperiority, are in reality common to all conditions. But whether the purſuits of ambition be ever wiſe, whether they contribute more to the happineſs or miſery of the purſuers, is a different queſtion; and a queſtion concerning which we may be allowed to entertain great doubt. The pleaſure of ſucceſs is exquiſite; ſo alſo is the anxiety of the purſuit, and the pain of diſappointment—and what is the worſt part of the account, the pleaſure is ſhort lived. We ſoon ceaſe to look back upon thoſe whom we have left behind; new conteſts are engaged in, new proſpects unfold themſelves; a ſucceſſion of ſtruggles is kept up, whilſt there is a rival left within the compaſs of our views and profeſſion; and when there is none, the pleaſure with the purſuit is at an end.

II. We have ſeen what happineſs does not conſiſt in. We are next to conſider in what it does conſiſt.

In the conduct of life, the great matter is, to know beforehand, what will pleaſe us, and what pleaſures will hold out. So far as we know this, our choice will be juſtified by the event. And this knowledge is more ſcarce and difficult than at firſt ſight it may ſeem to be: for ſometimes, pleaſures which are wonderfully alluring and flattering in the proſpect, turn out in the poſſeſſion, extremely inſipid; or do not hold as we expected; at other times pleaſures ſtart up, which never entered into our calculation;

and which we might have miſſed of by not foreſeeing: from whence we have reaſon to believe, that we actually do miſs of many pleaſures from the ſame cauſe. I ſay to know "beforehand," for after the experiment is tried, it is commonly impracticable to retreat or change; beſide that ſhifting and changing is apt to generate a habit of reſtleſſneſs, which is deſtructive of the happineſs of every condition.

By reaſon of the original diverſity of taſte, capacity, and conſtitution, obſervable in the human ſpecies, and the ſtill greater variety, which habit and faſhion have introduced in theſe particulars, it is impoſſible to propoſe any plan of happineſs, which will ſucceed to all, or any method of life which is univerſally eligible or practicable.

All that can be ſaid is, that there remains a preſumption in favour of thoſe conditions of life in which men generally appear moſt cheerful and contented. For though the apparent happineſs of mankind be not always a true meaſure of their real happineſs, it is the beſt meaſure we have.

Taking this for my guide, I am inclined to believe that happineſs conſiſts,

FIRST, In the exerciſe of the ſocial affections.

Thoſe perſons commonly poſſeſs good ſpirits who have about them many objects of affection and endearment, as wife, children, kindred, friends. And to the want of theſe may be imputed the peeviſhneſs of monks, and of ſuch as lead a monaſtic life.

Of the ſame nature with the indulgence of our domeſtic affections, and equally refreſhing to the ſpirits, is the pleaſure which reſults from acts of bounty and beneficence, exerciſed either in giving money, or in imparting to thoſe who want it the aſſiſtance of our ſkill and profeſſion.

Another main article of human happineſs is,

SECOND, The exerciſe of our faculties, either of body or mind, in the purſuit of ſome engaging end.

It ſeems to be true, that no plenitude of preſent gratifications, can make the poſſeſſor happy for a continuance, unleſs he have ſomething in reſerve—ſomething to hope for, and look forward to. This I conclude to be the caſe, from comparing the alacrity and ſpirits of men, who are engaged in any purſuit which intereſts them, with the dejection and *ennui* of almoſt all, who are either born to ſo much that they want nothing more, or who have *uſed up* their ſatiſfactions too ſoon, and drained the ſources of them.

It is this intolerable vacuity of mind, which carries the rich and great to the horſe-courſe and the gaming-table; and often engages them in conteſts and purſuits, of which the ſucceſs bears no proportion to the ſolicitude and expenſe, with which it is ſought. An election for a diſputed borough ſhall coſt the parties twenty or thirty thouſand pounds a piece, to ſay nothing of the anxiety, humiliation, and fatigue of the canvaſs; when a ſeat in the Houſe of Commons, of exactly the ſame value, may be had for a tenth part of the money, and with no trouble. I do not mention this to blame the rich and great, (perhaps they cannot do better) but in confirmation of what I have advanced.

Hope, which thus appears to be of ſo much importance to our happineſs, is of two kinds, where there is ſomething to be done towards attaining the object of our hope, and where there is nothing to be done. The firſt alone is of any value; the latter being apt to corrupt into impatience, having nothing in its power but to ſit ſtill and wait, which ſoon grows tireſome.

The doctrine delivered under this head may be readily admitted; but how to provide ourſelves with a ſucceſſion of pleaſurable engagements, is the difficulty. This requires two things; judgment in the choice of ends adapted to our opportunities; and a command of imagination, ſo as to be able, when the judgment has made choice of an end, to transfer a pleaſure to the *means ;* after which the end may be forgotten as ſoon as we will.

Hence thoſe pleaſures are moſt valuable, not which are moſt exquiſite in the fruition, but which are moſt productive of engagement and activity in the purſuit.

A man who is in earneſt in his endeavours after the happineſs of a future ſtate, has, in this reſpect, an advantage over all the world. For he has conſtantly before his eyes an object of ſupreme importance, productive of perpetual engagement and activity, and of which the purſuit (which can be ſaid of no purſuit beſides) laſts him to his life's end. Yet even he muſt have many ends, beſide the *far end :* but then they will conduct to that, be ſubordinate, and in ſome way or other capable of being referred to that, and derive their ſatisfaction, or an addition of ſatisfaction, from that.

Engagement is every thing. The more ſignificant, however, our engagements are, the better ; ſuch as the planning of laws, inſtitutions, manufactures, charities, improvements, public works ; and the endeavouring, by our intereſt, addreſs, ſolicitations, and activity, to carry them into effect : or upon a ſmaller ſcale, the procuring of a maintenance and fortune for our families by a courſe of induſtry and application to our callings, which forms and gives motion to the common occupations of life ; training up a child ; proſecuting a ſcheme for his future eſtabliſhment ; making ourſelves maſters of a language or a ſcience ; improving or managing an eſtate ; labouring after a piece of preferment : and laſtly, any engagement, which is innocent, is better than none : as the writing of a book, the building of a houſe, the laying out of a garden, the digging of a fiſh-pond—even the raiſing of a cucumber or a tulip.

Whilſt the mind is taken up with the objects of buſineſs before us, we are commonly happy, whatever the object or buſineſs be : when the mind is *abſent*, and the thoughts are wandering to ſomething elſe than what is paſſing in the place in which we are, we are often miſerable.

Third, Happineſs depends upon the prudent conſtitution of the habits.

The art in which the ſecret of human happineſs in a great meaſure conſiſts, is to *ſet* the habits in ſuch a manner, that every change may be a change for the better. The habits themſelves are much the ſame; for whatever is made habitual, becomes ſmooth, and eaſy, and nearly indifferent. The return to an old habit is likewiſe eaſy, whatever the habit be. Therefore the advantage is with thoſe habits which allow of indulgence in the deviation from them. The luxurious receive no greater pleaſure, from their dainties, than the peaſant does from his bread and cheeſe: but the peaſant, whenever he goes abroad, finds a feaſt; whereas the epicure muſt be well entertained to eſcape diſguſt. Thoſe who ſpend every day at cards, and thoſe who go every day to plough, paſs their time much alike; intent upon what they are about, wanting nothing, regretting nothing, they are both for the time in a ſtate of eaſe: but then, whatever ſuſpends the occupation of the card-player, diſtreſſes him; whereas to the labourer, every interruption is a refreſhment: and this appears in the different effect that Sunday produces upon the two, which proves a day of recreation to the one, but a lamentable burthen to the other. The man who has learned to live alone, feels his ſpirits enlivened whenever he enters into company, and takes his leave without regret; another, who has long been accuſtomed to a crowd, or continual ſucceſſion of company, experiences in company no elevation of ſpirits, nor any greater ſatisfaction, than what the man of retired life finds in his chimney corner. So far their conditions are equal; but let a change of place, fortune, or ſituation, ſeparate the companion from his circle, his viſitors, his club, common room, or coffee-houſe, and the difference of advantage in the choice and conſtitution of the two habits will ſhew itſelf. Solitude comes to the one clothed with melancholy; to the other it brings liberty and quiet. You will ſee the one fretful and reſtleſs, at a loſs how to diſpoſe of his time, till the hour come round that he can forget himſelf in bed; the other eaſy and ſatisfied, taking up his book, or his pipe, as ſoon as he finds himſelf alone; ready to admit any little amuſement that caſts up, or to turn his hands and attention to the firſt buſineſs that preſents itſelf; or content without either to ſit ſtill, and let his trains of thought glide indolently through his brain, without much uſe, perhaps, or pleaſure, but without *hankering* after any thing better, and without irritation. A reader, who has inured himſelf to books of ſcience and argumentation, if a novel, a well written pamphlet, an article of news, a narrative of a curious voyage, or the journal of a traveller, fall in his way, ſits down to the repaſt with reliſh; enjoys his entertainment while it laſts, and can return, when it is over, to his graver reading, without diſtaſte. Another, with whom nothing will go down but works of humour and pleaſantry, or whoſe curioſity muſt be intereſted by perpetual novelty, will conſume a bookſeller's window in half a forenoon; during which time he is rather in ſearch of diverſion than diverted; and as books to his taſte are few, and ſhort, and rapidly read over, the ſtock is ſoon exhauſted, when he is left without reſource from this principal ſupply of harmleſs amuſement.

So far as circumſtances of fortune conduce to happineſs, it is not the income which any man poſſeſſes, but the increaſe of income that affords the pleaſure. Two perſons, of whom one begins with an hundred and advances his income to a thouſand pounds a year; and the other ſets off with a thouſand, and dwindles down to an hundred, may, in the courſe of their time, have the receipt and ſpending of the ſame ſum of money: yet their ſatisfaction, ſo far as fortune is concerned in it, will be very different: the ſeries and ſum total of their income being the ſame, it makes a wide difference at which end they begin.

FOURTH, Happineſs conſiſts in health.

By health I underſtand, as well freedom from bodily diſtempers, as that tranquillity, firmneſs, and alacrity of mind, which we call good ſpirits; and which may properly enough be included in our notion of health, as depending commonly upon the ſame cauſes, and yielding to the ſame management, as our bodily conſtitution.

Health, in this ſenſe, is the one thing needful. Therefore no pains, expenſe, ſelf-denial, or reſtraint, to which we ſubject ourſelves, for the ſake of health, is too much. Whether it require us to relinquiſh lucrative ſituations, to abſtain from favourite indulgences, to control intemperate paſſions, or undergo tedious regimens; whatever difficulties it lays us under, a man who purſues his happineſs rationally and reſolutely, will be content to ſubmit to.

When we are in perfect health and ſpirits, we feel in ourſelves a happineſs independent of any particular outward gratification whatever, and of which we can give no account. This is an enjoyment which the Deity has annexed to life; and probably conſtitutes, in a great meaſure, the happineſs of infants and brutes, eſpecially of the lower and ſedentary orders of animals, as of oyſters, periwinkles, and the like; for which I have ſometimes been at a loſs to find out amuſement.

The above account of human happineſs will juſtify the two following concluſions, which, although found in moſt books of morality, have ſeldom, I think, been ſupported by any ſufficient reaſons.

Firſt, That happineſs is pretty equally diſtributed amongſt the different orders of civil ſociety.

Second, That vice has no advantage over virtue, even with reſpect to this world's happineſs.

Chapter VII.

VIRTUE.

VIRTUE is, "*the doing good to mankind, in obedience to the will of God, and for the ſake of everlaſting happineſs.*"

According to which definition, "the good of mankind" is the ſubject, the "will of God" the rule, and "everlaſting happineſs" the motive of human virtue.

Virtue has been divided by ſome moraliſts into *benevolence*, *prudence*, *fortitude*, and *temperance*. *Benevolence* propoſes good ends; *prudence* ſuggeſts the beſt means of attaining them; *fortitude* enables us to encounter the difficulties, dangers, and diſcouragements, which ſtand in our way in the purſuit of theſe ends; *temperance* repels and overcomes the paſſions that obſtruct it. *Benevolence*, for inſtance, prompts us to undertake the cauſe of an oppreſſed orphan; *prudence* ſuggeſts the beſt means of going about it; *fortitude* enables us to confront the danger, and bear up againſt the loſs, diſgrace, or repulſe, that may attend our undertaking; and *temperance* keeps under the love of money, of eaſe, or amuſement, which might divert us from it.

Virtue is diſtinguiſhed by others into two branches only, *prudence* and *benevolence*; *prudence* attentive to our own intereſt; *benevolence* to that of our fellow creatures: both direct to the ſame end, the increaſe of happineſs in nature; and taking equal concern in the future as in the preſent.

The four CARDINAL virtues are, *prudence*, *fortitude*, *temperance*, and *juſtice*.

But the diviſion of virtue, to which we are now-a-days moſt accuſtomed, is into duties.

Towards *God;* as piety, reverence, reſignation, gratitude, &c.

Towards *other men* (or relative duties;) as juſtice, charity, fidelity, loyalty, &c.

Towards *ourſelves;* as chaſtity, ſobriety, temperance, preſervation of life, care of health, &c.

More of theſe diſtinctions have been propoſed, which it is not worth while to ſet down.

I ſhall proceed to ſtate a few obſervations, which relate to the general regulation of human conduct; unconnected indeed with each other, but very worthy of attention; and which fall as properly under the title of this Chapter as of any other.

I. Mankind act more from habit than reflection.

It is on few, only, and great occaſions that men deliberate at all; on fewer ſtill, that they inſtitute any thing like a regular inquiry into the moral rectitude or depravity of what they are about to do; or wait for the reſult of it. We are for the moſt part determined at once; and by an impulſe, which is the effect and energy of pre-eſtabliſhed habits. And this conſtitution ſeems well adapted to the exigencies of human life, and to the imbecility of our moral principle. In the current occaſions and rapid opportunities of life, there is ofttimes little leiſure for reflection; and were there more, a man, who has to reaſon about his duty, when the temptation to tranſgreſs is upon him, is almoſt ſure to reaſon himſelf into an error.

If we are in ſo great a degree paſſive under our habits, where, it is aſked, is the exerciſe of virtue, the guilt of vice, or any uſe of moral and religious knowledge? I anſwer, in the *forming and contracting* of theſe habits.

And from hence reſults a rule of life of conſiderable importance, viz. that many things are to be done, and abſtained from, ſolely for the ſake of habit. We will explain ourſelves by an example or two. A beggar, with the appearance of extreme diſtreſs, aſks our charity. If we come to argue the matter, whether the diſtreſs be real, whether it be not brought upon himſelf, whether it be of public advantage to admit ſuch applications, whether it be not to encourage idleneſs and vagrancy, whether it may not invite impoſtors to our doors, whether the money can be well ſpared, or might not be better applied; when theſe conſiderations are put together, it may appear very doubtful, whether we ought or ought not, to give any thing. But when we reflect, that the miſery before our eyes excites our pity, whether we will or not; that it is of the utmoſt conſequence to us to cultivate this tenderneſs of mind; that it is a quality, cheriſhed by indulgence, and ſoon ſtifled by oppoſition: when this, I ſay, is conſidered, a wiſe man will do that for his own ſake, which he would have heſitated to do for the petitioner's; he will give way to his compaſſion, rather than offer violence to a habit of ſo much general uſe.

A man of confirmed good habits will act in the ſame manner, without any conſideration at all.

This may ſerve for one inſtance: another is the following. A man has been brought up from his infancy with a dread of lying. An occaſion preſents itſelf where, at the expenſe of a little veracity, he may divert his company, ſet off his own wit with advantage, attract the notice and engage the partiality of all about him. This is not a ſmall temptation. And when he looks at the other ſide of the queſtion, he ſees no miſchief that can enſue from this liberty, no ſlander of any man's reputation, no prejudice likely to ariſe to any man's intereſt. Were there nothing further to be conſidered, it would be difficult to ſhow why a man under ſuch circumſtances might not indulge his humour. But when he reflects that his ſcruples about lying have hitherto preſerved him free from this vice; that occaſions like the preſent will return, where the inducement may be equally ſtrong, but the indulgence much leſs innocent; that his ſcruples will wear away by a few tranſgreſſions, and leave him ſubject to one of the meaneſt and moſt pernicious of all bad habits, a habit of lying whenever it will ſerve his turn: when all this, I ſay, is conſidered, a wiſe man will forego the preſent, or a much greater pleaſure, rather than lay the foundation of a character ſo vicious and contemptible.

From what has been ſaid may be explained alſo the nature of *habitual* virtue. By the definition of virtue, placed at the beginning of this Chapter, it appears, that the good of mankind is the ſubject, the will of God the rule, and everlaſting happineſs the motive and end of all virtue. Yet in fact a man ſhall perform many an act of virtue, without having either the good of mankind, the will of God, or everlaſting happineſs in his thoughts. How is this to be underſtood? In the ſame manner as that a man may be a very good ſervant, without being conſcious at every turn of a particular regard to his maſter's will, or of an expreſs attention to his maſter's intereſt; indeed your beſt old ſervants are of this ſort; but then he muſt have ſerved for a length of time under the actual direction of theſe motives to bring it to this: in which ſervice his merit and virtue conſiſt.

There are *habits*, not only of drinking, ſwearing, and lying, and of ſome other things, which are commonly acknowledged to be habits, and called ſo; but of every modification of action, ſpeech, and thought. Man is a bundle of habits. There are habits of induſtry, attention, vigilance, advertency; of a prompt obedience to the judgment occurring, or of yielding to the firſt impulſe of paſſion; of extending our views to the future, or of reſting upon the preſent;

of apprehending, methodizing, reaſoning; of indolence and dilatorineſs; of vanity, ſelf-conceit, melancholy, partiality; of fretfulneſs, ſuſpicion, captiouſneſs, cenſoriouſneſs; of pride, ambition, covetouſneſs; of over-reaching, intriguing, projecting. In a word, there is not a quality, or function, either of body or mind, which does not feel the influence of this great law of animated nature.

II. The Chriſtian religion hath not aſcertained the preciſe quantity of virtue neceſſary to ſalvation.

This has been made an objection to Chriſtianity; but without reaſon. For, as all revelation, however imparted originally, muſt be tranſmitted by the ordinary vehicle of language, it behoves thoſe who make the objection to ſhew that any form of words could be deviſed, which might expreſs this *quantity;* or that it is poſſible to conſtitute a ſtandard of moral attainments, accommodated to the almoſt infinite diverſity which ſubſiſts in the capacities and opportunities of different men.

It ſeems moſt agreeable to our conceptions of juſtice, and is conſonant enough to the language of ſcripture,* to ſuppoſe that there are prepared for us rewards and puniſhments, of all poſſible degrees, from the moſt exalted happineſs down to extreme miſery; ſo that "our labour is never in vain;" whatever advancement we make in virtue, we procure a proportionable acceſſion of future happineſs; as, on the other hand, every accumulation of vice is the "treaſuring up of ſo much wrath againſt the day of wrath." It has been ſaid, that it can never be a juſt economy of Providence, to admit one part of mankind into heaven, and condemn the other to hell, ſince there muſt be very little to chooſe, between the worſt man who is received into heaven, and the beſt who is excluded. And how know we, it might be anſwered, but that there may be as little to chooſe in their conditions?

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* "He which ſoweth ſparingly ſhall reap alſo ſparingly; and he which ſoweth bountifully ſhall reap alſo bountifully." 2 Cor. ix. 6.—"And that ſervant which knew his Lord's will, and prepared not himſelf, neither did according to his will, ſhall be beaten with many ſtripes; but he that knew not, ſhall be beaten with few ſtripes." Luke xii. 47, 48.—"Whoſoever ſhall give you a cup of water to drink in my name, becauſe ye belong to Chriſt, verily I ſay unto you, he ſhall not loſe his reward;" to wit, intimating that there is in reſerve a proportional reward for even the ſmalleſt act of virtue. Mark ix. 41.—See alſo the parable of the pounds, Luke xix. 16, &c. where he whoſe pound had gained ten pounds, was placed over ten cities; and he whoſe pound had gained five pounds, was placed over five cities.

Without entering into a detail of ſcripture morality, which would anticipate our ſubject, the following general poſitions may be advanced, I think, with ſafety:

1. That a ſtate of happineſs is not to be expected by thoſe who are conſcious of no moral or religious rule. I mean thoſe, who cannot with truth ſay, that they have been prompted to one action, or withheld from one gratification, by any regard to virtue or religion, either immediate or habitual.

There needs no other proof of this, than the conſideration, that a brute would be as proper an object of reward as ſuch a man; and that, if the caſe were ſo, the penal ſanctions of religion could have no place. For whom would you puniſh, if you make ſuch a one as this happy?—or rather indeed religion itſelf, both natural and revealed, would ceaſe to have either uſe or authority.

2. That a ſtate of happineſs is not to be expected by thoſe, who reſerve to themſelves the habitual practice of any one ſin, or neglect of one known duty.

Becauſe no obedience can proceed upon proper motives which is not univerſal, that is, which is not directed to every command of God alike, as they all ſtand upon the ſame authority.

Becauſe, ſuch an allowance would in effect amount to a toleration of every vice in the world.

And becauſe, the ſtrain of ſcripture language excludes any ſuch hope. When our *duties* are recited, they are put *collectively*, that is, as all and every of them required in the Chriſtian character. "*Add* to your faith virtue, and to virtue knowledge, and to knowledge temperance, and to temperance patience, and to patience godlineſs, and to godlineſs brotherly kindneſs, and to brotherly kindneſs charity."* On the other hand, when *vices* are enumerated, they are put *disjunctively*, that is, as ſeparately and ſeverally excluding the ſinner from heaven. "*Neither* fornicators, nor idolaters, nor adulterers, nor effeminate, nor abuſers of themſelves with mankind, nor thieves, nor covetous, nor drunkards, nor revilers, nor extortioners, ſhall inherit the kingdom of heaven."†

Thoſe texts of ſcripture, which ſeem to lean a contrary way, as that "charity ſhall cover a multitude of ſins;"‡ that "he which converteth a ſinner from the error of his way ſhall hide a multitude of ſins;"|| cannot I think, for the reaſons above mentioned, be extended to ſins deliberately, habitually, and obſtinately perſiſted in.

3. That a ſtate of mere unprofitableneſs will not go unpuniſhed.

This is expreſsly laid down by Chriſt in the parable of the talents, which ſuperſedes all farther reaſoning upon the ſubject. "Then he which had received one talent, came and ſaid, Lord, I know thee that thou art an auſtere man, reaping where thou haſt not ſown, and gathering where thou haſt not ſtrawed; and I was afraid, and hid my talent in the earth; lo, there thou haſt that is thine. His Lord anſwered and ſaid unto him, thou wicked and *ſlothful* ſervant, thou kneweſt (or kneweſt thou ?) that I reap where I ſowed not, and gather where I have not ſtrawed; thou oughteſt therefore to have put my money to the exchangers, and then at my coming I ſhould have received mine own with uſury. Take therefore the talent from him, and give it unto him

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* 2 Pet. i. 5, 6, 7.

† 1 Cor. vi. 9, 10.

‡ 1 Pet. iv. 8.

|| James v. 20.

which hath ten talents; for unto every one that hath ſhall be given, and he ſhall have abundance; but from him that hath not ſhall be taken away even that which he hath; *and caſt ye the unprofitable ſervant into outer darkneſs, there ſhall be weeping and gnaſhing of teeth.*"*

III. In every queſtion of conduct where one ſide is doubtful and the other ſide ſafe, we are bound to take the ſafe ſide.

This is beſt explained by an inſtance, and I know of none more to our purpoſe than that of ſuicide. Suppoſe, for example's ſake, that it appear doubtful to a reaſoner upon the ſubject whether he may lawfully deſtroy himſelf. He can have no doubt, but that it is lawful for him to let it alone.

Here therefore is a caſe, in which one ſide is doubtful, and the other ſide ſafe. By virtue therefore of our rule, he is bound to purſue the ſafe ſide, that is, to forbear from offering violence to himſelf whilſt a doubt remains upon his mind concerning the lawfulneſs of ſuicide.

It is *prudent*, you allow, to take the ſafe ſide. But our obſervation means ſomething more. We aſſert that the action, concerning which we doubt, whatever it may be in itſelf, or to another, would in *us*, whilſt this doubt remains upon our minds, be certainly ſinful. The caſe is expreſsly ſo adjudged by St. Paul, with whoſe authority we will for the preſent reſt contented. "I know and am perſuaded by the Lord Jeſus, that there is nothing unclean of itſelf, but *to him that eſteemeth any thing to be unclean, to him it is unclean.*——————Happy is he that condemneth not himſelf in that thing which he alloweth; and he that doubteth is damned *(condemned)* if he eat, for whatſoever is not of faith (i. e. not done with a full perſuaſion of the lawfulneſs of it) is ſin."†

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* Matt. xxv. 24, &c.

† Romans xiv. 14, 22, 23.

BOOK II.

Moral Obligation.

Chapter I.

THE QUESTION, *WHY AM I OBLIGED TO KEEP MY WORD?* CONSIDERED.

WHY am I *obliged* to keep my word?

Becauſe it is right, ſays one. Becauſe it is agreeable to the fitneſs of things, ſays another. Becauſe it is conformable to reaſon and nature, ſays a third. Becauſe it is conformable to truth, ſays a fourth. Becauſe it promotes the public good, ſays a fifth. Becauſe it is required by the will of God, concludes a ſixth.

Upon which different accounts, two things are obſervable:

Firſt, That they all ultimately coincide.

The fitneſs of things, means their fitneſs to produce happineſs: the nature of things, means that actual conſtitution of the world, by which ſome things, as ſuch and ſuch actions, for example, produce happineſs, and others miſery: reaſon is the principle, by which we diſcover or judge of this conſtitution: truth is this judgment expreſſed or drawn out into propoſitions. So that it neceſſarily comes to paſs, that what promotes the public happineſs, or happineſs upon the whole, is agreeable to the fitneſs of things, to nature, to reaſon, and to truth: and ſuch (as will appear by and by) is the divine character, that what promotes the general happineſs, is required by the will of God; and what has all the above properties, muſt needs be *right;* for right means no more than conformity to the rule we go by, whatever that rule be.

And this is the reaſon that moraliſts, from whatever different principles they ſet out, commonly meet in their concluſions; that is, they enjoin the ſame conduct, preſcribe the ſame rules of duty, and, with a few exceptions, deliver upon dubious caſes the ſame determinations.

Secondly, It is to be obſerved, that theſe anſwers all leave the matter ſhort; for the inquirer may turn round upon his teacher with a ſecond queſtion, in which he will expect to be ſatisfied, namely, *why* am I obliged to do what is right; to act agreeably to the fitneſs of things; to conform to reaſon, nature, or truth; to promote the public good, or to obey the will of God?

The proper method of conducting the inquiry is, firſt, to examine what we mean, when we ſay a man is *obliged* to do any thing, and then, to ſhew *why* he is obliged to do the thing which we have propoſed as an example, namely, "to keep his word."

Chapter II.

WHAT WE MEAN WHEN WE SAY A MAN IS *OBLIGED* TO DO A THING.

A MAN is to be ſaid to be *obliged*, "*when he is urged by a violent motive, reſulting from the command of another.*"

FIRST, "The motive muſt be violent." If a perſon, who has done me ſome little ſervice, or has a ſmall place in his diſpoſal, aſk me upon ſome occaſion for my vote, I may poſſibly give it him, from a motive of gratitude or expectation; but I ſhould hardly ſay, that I was *obliged* to give it him, becauſe the inducement does not riſe high enough. Whereas, if a father or a maſter, or any great benefactor, or one on whom my fortune depends, require my vote, I give it him of courſe; and my anſwer to all who aſk me why I voted ſo and ſo, is, that my father or my maſter *obliged* me; and that I had received ſo many favours from, or had ſo great a dependence upon ſuch a one, that I was *obliged* to vote as he directed me.

SECONDLY, "It muſt reſult from the command of another." Offer a man a gratuity for doing any thing, for ſeizing, for example, an offender, he is not *obliged* by your offer to do it; nor could he ſay he is, though he may be *induced*, *perſuaded*, *prevailed upon*, *tempted*. If a magiſtrate, or the man's immediate ſuperior command it, he conſiders himſelf as *obliged* to comply, though poſſibly he would loſe leſs by a refuſal in this caſe, than in the former.

I will not undertake to ſay that the words *obligation* and *obliged* are uſed uniformly in this ſenſe, or always with this diſtinction; nor is it poſſible to tie down popular phraſes to any conſtant ſignification: but, wherever the motive is violent enough, and coupled with the idea of command, authority, law, or the will of a ſuperior, there, I take it, we always reckon ourſelves to be *obliged*.

And from this account of obligation it follows, that we can be obliged to nothing, but what we ourſelves are to gain or loſe ſomething by; for nothing elſe can be a "violent motive" to us. As we ſhould not be obliged to obey the laws, or the magiſtrate, unleſs rewards or puniſhments, pleaſure or pain, ſome how or other depended upon our obedience; ſo neither ſhould we, without the ſame reaſon, be obliged to do what is right, to practiſe virtue, or to obey the commands of God.

Chapter III.

THE QUESTION, *WHY AM I OBLIGED TO KEEP MY WORD?* RESUMED.

LET it be remembered, that to be *obliged*, "is to be urged by a violent motive, reſulting from the command of another."

And then let it be aſked, Why am I *obliged* to keep my word? and the anſwer will be, "becauſe I am urged to do ſo by a violent motive" (namely, the expectation of being after this life rewarded, if I do, or puniſhed for it, if I do not) "reſulting from the command of another" (namely, of God.)

This ſolution goes to the bottom of the ſubject, as no farther queſtion can reaſonably be aſked.

Therefore, private happineſs is our motive, and the will of God our rule.

When I firſt turned my thoughts to moral ſpeculations, an air of myſtery ſeemed to hang over the whole ſubject; which aroſe, I believe, from hence—that I ſuppoſed, with many authors whom I had read, that to be *obliged* to do a thing, was very different from being *induced* only to do it; and that the obligation to practiſe virtue, to do what is right, juſt, &c. was quite another thing, and of another kind, than the obligation which a ſoldier is under to obey his officer, a ſervant his maſter, or any of the civil and ordinary obligations of human life. Whereas, from what has been ſaid it appears, that moral obligation is like all other obligations; and that all *obligation* is nothing more than an inducement of ſufficient ſtrength, and reſulting, in ſome way, from the command of another.

There is always underſtood to be a difference between an act of *prudence* and an act of *duty*. Thus, if

I diſtruſted a man who owed me a ſum of money, I ſhould reckon it an act of prudence to get another perſon bound with him; but I ſhould hardly call it an act of duty. On the other hand, it would be thought a very unuſual and looſe kind of language, to ſay, that as I had made ſuch a promiſe it was *prudent* to perform it; or that as my friend, when he went abroad, placed a box of jewels in my hands, it would be *prudent* in me to preſerve it for him till he returned.

Now, in what, you will aſk, does the difference conſiſt? inaſmuch as, according to our account of the matter, both in the one caſe and the other, in acts of duty as well as acts of prudence, we conſider ſolely what we ourſelves ſhall gain or loſe by the act?

The difference, and the only difference, is this; that, in the one caſe we conſider what we ſhall gain or loſe in the preſent world; in the other caſe we conſider what alſo we ſhall gain or loſe in the world to come.

Thoſe who would eſtabliſh a ſyſtem of morality, independent of a future ſtate, muſt look out for ſome different idea of moral obligation; unleſs they can ſhew that virtue conducts the poſſeſſor to certain happineſs is this life, or to a much greater ſhare of it, than he could attain by a different behaviour.

To us there are two great queſtions:

I. Will there be after this life any diſtribution of rewards and puniſhments at all?

II. If there be, what actions will be rewarded, and what will be puniſhed?

The firſt queſtion compriſes the credibility of the Chriſtian religion, together with the preſumptive proofs of a future retribution from the light of nature. The ſecond queſtion compriſes the province of morality. Both queſtions are too much for one work. The affirmative therefore of the firſt, although we confeſs that it is the foundation upon which the whole fabric reſts, muſt in this treatiſe be taken for granted.

Chapter IV.

THE WILL OF GOD.

As the will of God is our rule, to inquire what is our duty, or what we are obliged to do, in any inſtance, is, in effect, to inquire what is the will of God in that inſtance? which conſequently becomes the whole buſineſs of morality.

Now there are two methods of coming at the will of God on any point:

I. By his expreſs declarations, when they are to be had; and which muſt be ſought for in ſcripture.

II. By what we can diſcover of his deſigns and diſpoſitions from his works, or, as we uſually call it, the light of nature.

And here we may obſerve the abſurdity of ſeparating natural and revealed religion from each other. The object of both is the ſame—to diſcover the will of God—and, provided we do but diſcover it, it matters nothing by what means.

An ambaſſador, judging by what he knows of his ſovereign's diſpoſition, and arguing from what he has obſerved of his conduct, or is acquainted with his deſigns, may take his meaſures in many caſes with ſafety; and preſume, with great probability, how his maſter would have him act on moſt occaſions that ariſe: but if he have his commiſſion and inſtructions in his pocket, it would be ſtrange not to look into them. He will naturally conduct himſelf by both rules; when his inſtructions are clear and poſitive, there is an end of all farther deliberation (unleſs indeed he ſuſpect their authenticity): where his inſtructions are ſilent or dubious, he will endeavour to ſupply or explain them, by what he has been able to collect from other quarters of his maſter's general inclination or intentions.

Mr. HUME, in his fourth Appendix to his Principles of Morals, has been pleaſed to complain of the modern ſcheme of uniting Ethics with the Chriſtian Theology. They who find themſelves diſpoſed to join in this complaint will do well to obſerve what Mr. HUME himſelf has been able to make of morality without this union. And for that purpoſe, let them read the ſecond part of the ninth ſection of the above eſſay; which part contains the practical application of the whole treatiſe,—a treatiſe which Mr. HUME declares to be "incomparably the beſt he ever wrote." When they have read it over, let them conſider, whether any motives there propoſed are likely to be found ſufficient to withhold men from the gratification of luſt, revenge, envy, ambition, avarice, or to prevent the exiſtence of theſe paſſions. Unleſs they riſe up from this celebrated eſſay, with ſtronger impreſſions upon their minds, than it ever left upon mine, they will acknowledge the neceſſity of additional ſanctions. But the neceſſity of theſe ſanctions is not now the queſtion. If they be *in fact eſtabliſhed*, if the rewards and puniſhments held forth in the goſpel will actually come to paſs, they *muſt* be conſidered. Such as reject the Chriſtian religion are to make the beſt ſhift they can to build up a ſyſtem, and lay the foundations of morality without it. But it appears to me a great inconſiſtency in thoſe who receive Chriſtianity, and expect ſomething to come of it, to endeavour to keep all ſuch expectations out of ſight in their reaſonings concerning human duty.

The method of coming at the will of God concerning any action, by the light of nature, is to inquire into "the tendency of the action to promote or diminiſh the general happineſs." This rule proceeds upon the preſumption, that God Almighty wills and wiſhes the happineſs of his creatures; and conſequently, that thoſe actions, which promote that will and wiſh, muſt be agreeable to him; and the contrary.

As this preſumption is the foundation of our whole ſyſtem, it becomes neceſſary to explain the reaſons upon which it reſts.

Chapter V.

THE DIVINE BENEVOLENCE.

WHEN God created the human ſpecies, either he wiſhed their happineſs, or he wiſhed their miſery, or he was indifferent and unconcerned about both.

If he had wiſhed our miſery, he might have made ſure of his purpoſe, by forming our ſenſes to be as many ſores and pains to us, as they are now inſtruments of gratification and enjoyment; or by placing us amidſt objects ſo ill ſuited to our perceptions, as to have continually offended us, inſtead of miniſtering to our refreſhment and delight. He might have made, for example, every thing we taſted bitter; every thing we ſaw loathſome; every thing we touched a ſting; every ſmell a ſtench; and every ſound a diſcord.

If he had been indifferent about our happineſs or miſery, we muſt impute to our good fortune (as all deſign by this ſuppoſition is excluded) both the capacity of our ſenſes to receive pleaſure, and the ſupply of external objects fitted to produce it.

But either of theſe, and ſtill more both of them, being too much to be attributed to accident, nothing remains but the firſt ſuppoſition, that God, when he created the human ſpecies, wiſhed their happineſs, and made for them the proviſion which he has made, with that view, and for that purpoſe.

The ſame argument may be propoſed in different terms, thus: Contrivance proves deſign; and the predominant tendency of the contrivance indicates the diſpoſition of the deſigner. The world abounds with contrivances; and all the contrivances which we are acquainted with, are directed to beneficial purpoſes. Evil no doubt exiſts; but is never, that we can perceive, the object of contrivance. Teeth are contrived to eat, not to ache; their aching now and then is incidental to the contrivance, perhaps, inſeparable from it; or even, if you will, let it be called a defect in the contrivance; but it is not the object of it. This is a diſtinction which well deſerves to be attended to. In deſcribing implements of huſbandry, you would hardly ſay of a ſickle, that it is made to cut the reaper's fingers, though from the conſtruction of the inſtrument, and the manner of uſing it, this miſchief often happens. But if you had occaſion to deſcribe inſtruments of torture or execution, this engine, you would ſay, is to extend the ſinews; this to diſlocate the joints; this to break the bones; this to ſcorch the ſoles of the feet. Here pain and miſery are the very objects of the contrivance. Now nothing of this ſort is to be found in the works of nature. We never diſcover a train of contrivance to bring about an evil purpoſe. No anatomiſt ever diſcovered a ſyſtem of organization, calculated to produce pain and diſeaſe; or, in explaining the parts of the human body, ever ſaid, this is to irritate; this to inflame; this duct is to convey the gravel to the kidneys; this gland to ſecrete the humour which forms the gout: if by chance he come at a part of which he knows not the uſe, the moſt he can ſay is, that it is uſeleſs; no one ever ſuſpects that it is put there to incommode, to annoy or torment. Since then God hath called forth his conſummate wiſdom to contrive and provide for our happineſs, and the world appears to have been conſtituted with this deſign at firſt, ſo long as this conſtitution is upholden by him, we muſt in reaſon ſuppoſe the ſame deſign to continue.

The contemplation of univerſal nature rather bewilders the mind than affects it. There is always a bright ſpot in the proſpect upon which the eye reſts; a ſingle example, perhaps, by which each man finds himſelf more *convinced* than by all others put together. I ſeem, for my own part, to ſee the benevolence of the Deity more clearly in the pleaſures of very young children, than in any thing in the world. The pleaſures of grown perſons may be reckoned partly of their own procuring; eſpecially if there has been any induſtry, or contrivance, or purſuit, to come at them; or if they are founded, like muſic, painting, &c. upon any qualification of their own acquiring. But the pleaſures of a healthy infant are ſo manifeſtly provided for it by *another*, and the benevolence of the proviſion is ſo unqueſtionable, that every child I ſee at its ſport affords to my mind a kind of ſenſible evidence of the finger of God, and of the diſpoſition which directs it.

But the example, which ſtrikes each man moſt ſtrongly, is the true example for him; and hardly two minds hit upon the ſame; which ſhews the abundance of ſuch examples about us.

We conclude, therefore, that God wills and wiſhes the happineſs of his creatures. And this concluſion being once eſtabliſhed, we are at liberty to go on with the rule built upon it, namely, "that the method of coming at the will of God, concerning any action, by the light of nature, is to inquire into the tendency of that action to promote or diminiſh the general happineſs."

Chapter VI.

UTILITY.

So then actions are to be eſtimated by their tendency.* Whatever is expedient is right. It is the utility of any moral rule alone which conſtitutes the obligation of it.

But to all this there ſeems a plain objection, viz. that many actions are uſeful, which no man in his ſenſes will allow to be right. There are occaſions, in which the hand of the aſſaſſin would be very uſeful. The preſent poſſeſſor of ſome great eſtate employs his influence and fortune to annoy, corrupt, or oppreſs all about him. His eſtate would devolve, by his death, to a ſucceſſor of an oppoſite character. It is uſeful, therefore, to diſpatch ſuch a one as ſoon as poſſible out of the way; as the neighbourhood will change thereby a pernicious tyrant for a wiſe and generous benefactor. It may be uſeful to rob a miſer and give the money to the poor; as the money, no doubt, would produce more happineſs, by being laid out in food and clothing for half a dozen diſtreſſed families, than by continuing locked up in a miſer's cheſt. It may be uſeful to get poſſeſſion of a place, a piece of preferment, or of a ſeat in parliament, by bribery or falſe ſwearing; as by means of them we may ſerve the public more effectually than in our private ſtation. What then ſhall we ſay? Muſt we admit theſe actions to be right, which would be to juſtify aſſaſſination, plunder, and perjury; or muſt we give up our principle, that the criterion of right is utility?

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* Actions in the abſtract are right or wrong, according to their *tendency;* the agent is virtuous or vicious, according to his *deſign.* Thus, if the queſtion be, Whether relieving common beggars be right or wrong? we inquire into the *tendency* of ſuch a conduct to the public advantage or inconvenience. If the queſtion be, Whether a man remarkable for this ſort of bounty, is to be eſteemed virtuous for that reaſon? we inquire into his *deſign,* whether his liberality ſprung from charity or from oſtentation? It is evident that our concern is with actions in the abſtract.

It is not neceſſary to do either.

The true anſwer is this; that theſe actions, after all, are not uſeful, and for that reaſon, and that alone, are not right.

To ſee this point perfectly, it muſt be obſerved that the bad conſequences of actions are twofold, *particular* and *general*.

The particular bad conſequence of an action, is the miſchief which that ſingle action directly and immediately occaſions.

The general bad conſequence is, the violation of ſome neceſſary or uſeful *general rule*.

Thus the particular bad conſequences of the aſſaſſination above deſcribed, are the fright and pain which the deceaſed underwent; the loſs he ſuffered of life, which is as valuable to a bad man as to a good one, or more ſo; the prejudice and affliction, of which his death was the occaſion, to his family, friends, and dependants.

The general bad conſequence is the violation of this neceſſary general rule, that no man be put to death for his crimes but by public authority.

Although, therefore, ſuch an action have no particular bad conſequence, or greater particular good conſequences, yet it is not uſeful by reaſon of the general conſequence, which is of more importance, and which is evil. And the ſame of the other two inſtances, and of a million more, which might be mentioned.

But as this ſolution ſuppoſes, that the moral government of the world muſt proceed by general rules, it remains that we ſhew the neceſſity of this.

Chapter VII.

THE NECESSITY OF GENERAL RULES.

YOU cannot permit one action and forbid another, without ſhewing a difference between them. Conſequently, the ſame ſort of actions muſt be generally permitted or generally forbidden. Where, therefore, the general permiſſion of them would be pernicious, it becomes neceſſary to lay down and ſupport the rule which generally forbids them.

Thus, to return once more to the caſe of the aſſaſſin. The aſſaſſin knocked the rich villain on the head, becauſe he thought him better out of the way than in it. If you allow this excuſe in the preſent inſtance, you muſt allow it to all, who act in the ſame manner, and from the ſame motive; that is, you muſt allow every man to kill any one he meets, whom he thinks noxious or uſeleſs; which, in the event, would be to commit every man's life and ſafety to the ſpleen, fury, and fanaticiſm of his neighbour—a diſpoſition of affairs which would ſoon fill the world with miſery and confuſion; and ere long put an end to human ſociety, if not to the human ſpecies.

The neceſſity of general rules in human governments is apparent: but whether the ſame neceſſity ſubſiſt in the divine economy, in that diſtribution of rewards and puniſhments, to which a moraliſt looks forward, may be doubted.

I anſwer, that general rules are neceſſary to every moral government; and by moral government I mean any diſpenſation, whoſe object is to influence the conduct of reaſonable creatures.

For if, of two actions perfectly ſimilar, one be puniſhed, and the other be rewarded or forgiven, which is the conſequence of rejecting general rules, the ſubjects of ſuch a diſpenſation would no longer know, either what to expect or how to act. Rewards and puniſhments would ceaſe to be ſuch—would become accidents. Like the ſtroke of a thunderbolt, or the diſcovery of a mine, like a blank or benefit ticket in a lottery, they would occaſion pain or pleaſure when they happened ; but following in no known order, from any particular courſe of action, they could have no previous influence or effect upon the conduct.

An attention to general rules, therefore, is included in the very idea of reward and puniſhment. Conſequently whatever reaſon there is to expect future reward and puniſhment at the hand of God, there is the ſame reaſon to believe, that he will proceed in the diſtribution of it by general rules.

Before we proſecute the conſideration of general conſequences any farther, it may be proper to anticipate a reflection, which will be apt enough to ſuggeſt itſelf in the progreſs of our argument.

As the general conſequence of an action, upon which ſo much of the guilt of a bad action depends, conſiſts in the *example ;* it ſhould ſeem, that, if the action be done with perfect ſecrecy, ſo as to furniſh no bad example, that part of the guilt drops off. In the caſe of ſuicide, for inſtance, if a man can ſo manage matters, as to take away his own life, without being known or ſuſpected to have done ſo, he is not chargeable with any miſchief from the example ; nor does his puniſhment ſeem neceſſary, in order to ſave the authority of any general rule.

In the firſt place, thoſe who reaſon in this manner do not obſerve that they are ſetting up a general rule, of all others the leaſt to be endured ; namely, that ſecrecy, whenever ſecrecy is practicable, will juſtify any action.

Were ſuch a rule admitted, for inſtance, in the caſe above produced, is there not reaſon to fear that people would be *diſappearing* perpetually ?

In the next place, I would wiſh them to be well ſatisfied about the points propoſed in the following queries:

1. Whether the ſcriptures do not teach us to expect that at the general judgment of the world, the moſt ſecret actions will be brought to light?*

2. For what purpoſe can this be, but to make them the objects of reward and puniſhment?

3. Whether being ſo brought to light, they will not fall under the operation of thoſe equal and impartial rules, by which God will deal with his creatures?

They will then become examples, whatever they be now; and require the ſame treatment from the judge and governor of the moral world, as if they had been detected from the firſt.

Chapter VIII.

THE CONSIDERATION OF GENERAL CONSEQUENCES PURSUED.

THE general conſequence of any action may be eſtimated, by aſking what would be the conſequence, if the ſame ſort of actions were generally permitted. But ſuppoſe they were, and a thouſand ſuch actions perpetrated under this permiſſion; is it juſt to charge a ſingle action with the collected guilt and miſchief of the whole thouſand? I anſwer, that the reaſon for prohibiting and puniſhing an action (and this reaſon may be called the *guilt* of the action, if you pleaſe) will always be in proportion to the whole miſchief that would ariſe from the general impunity and toleration of actions of the ſame ſort.

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* "In the day when God ſhall judge the ſecrets of men by Jeſus Chriſt." Rom. xi. 16—"Judge nothing before the time until the Lord come, who will bring to light the hidden things of darkneſs, and will make manifeſt the counſels of the heart." 1. Cor. iv. 5.

"Whatever is expedient is right." But then it muſt be expedient upon the whole, at the long run, in all its effects, collateral and remote, as well as in thoſe which are immediate and direct; as it is obvious, that, in computing conſequences, it makes no difference in what way or at what diſtance they enſue.

To impreſs this doctrine upon the minds of young readers, and to teach them to extend their views beyond the immediate miſchief of a crime, I ſhall here ſubjoin a ſtring of inſtances, in which the particular conſequence is comparatively inſignificant; and where the malignity of the crime, and the ſeverity with which human laws purſue it, is almoſt entirely founded upon the general conſequence.

The particular conſequence of coining is, the loſs of a guinea, or of half a guinea, to the perſon who receives the counterfeit money; the general conſequence (by which I mean the conſequence that would enſue, if the ſame practice were generally permitted) is to aboliſh the uſe of money.

The particular conſequence of forgery is, a damage of twenty or thirty pounds to the man who accepts the forged bill; the general conſequence is the ſtoppage of paper currency.

The particular conſequence of ſheep-ſtealing, or horſe-ſtealing is, a loſs to the owner, to the amount of the value of the ſheep or horſe ſtolen; the general conſequence is, that the land could not be occupied, nor the market ſupplied with this kind of ſtock.

The particular conſequence of breaking into a houſe empty of inhabitants is, the loſs of a pair of ſilver candleſticks, or a few ſpoons; the general conſequence is, that nobody could leave their houſe empty.

The particular conſequence of ſmuggling may be a deduction from the national fund, too minute for computation: the general conſequence is, the deſtruction of one entire branch of public revenue; a proportionable increaſe of the burthen upon other branches; and the ruin of all fair and open trade in the article ſmuggled.

The particular conſequence of an officer's breaking his parole is, the loſs of a priſoner, who was poſſibly not worth keeping; the general conſequence is, that this mitigation of captivity would be refuſed to all others.

And what proves inconteſtibly the ſuperior importance of general conſequences is, that crimes are the ſame, and treated in the ſame manner, though the particular conſequence be very different. The crime and fate of the houſe-breaker is the ſame whether his booty be five pounds or fifty. And the reaſon is, that the general conſequence is the ſame

The want of this diſtinction between particular and general conſequences, or rather the not ſufficiently attending to the latter, is the cauſe of that perplexity which we meet with in ancient moraliſts. On the one hand, they were ſenſible of the abſurdity of pronouncing actions good or evil, without regard to the good or evil they produced. On the other hand, they were ſtartled at the concluſions to which a ſteady adherence to conſequences ſeemed ſometimes to conduct them. To relieve this difficulty, they contrived the *το πρεπον*, or the *honeſtum*, by which terms they meant to conſtitute a meaſure of right, diſtinct from utility. Whilſt the *utile* ſerved them, that is, whilſt it correſponded with their habitual notions of the rectitude of actions, they went by it. When they fell in with ſuch caſes as thoſe mentioned in the ſixth Chapter, they took leave of their guide, and reſorted to the *honeſtum*. The only account they could give of the matter was, that theſe actions might be uſeful; but, becauſe they were not at the ſame time *honeſta*, they were by no means to be deemed juſt or right.

From the principles delivered in this and the two preceding Chapters, a maxim may be explained, which is in every man's mouth, and in moſt men's without meaning, viz. "not to do evil that good may come:" that is, let us not violate a general rule for the ſake of any particular good conſequence we may expect. Which is for the moſt part a ſalutary caution, the advantage ſeldom compenſating for the violation of the rule. Strictly ſpeaking, that cannot be "evil" from which "good comes;" but in this way, and with a view to the diſtinction between particular and general conſequences, it may.

We will conclude this ſubject of *conſequences* with the following reflection. A man may imagine, that any action of his, with reſpect to the public, muſt be inconſiderable: ſo alſo is the agent. If his crime produce but a ſmall effect upon the univerſal intereſt, his puniſhment or deſtruction bears a ſmall proportion to the ſum of happineſs and miſery in the creation.

Chapter IX.

OF RIGHT.

RIGHT and obligation are reciprocal; that is, wherever there is a right in one perſon, there is a correſponding obligation upon others. If one man has a "right" to an eſtate, others are "obliged" to abſtain from it: If parents have a "right" to reverence from their children, children are "obliged" to reverence their parents; and ſo in all other inſtances.

Now, becauſe moral *obligation* depends, as we have ſeen, upon the will of God, *right*, which is correlative to it, muſt depend upon the ſame. Right therefore ſignifies, *conſiſtency with the will of God.*

But if the divine will determine the diſtinction of right and wrong, what elſe is it but an identical propoſition, to ſay of God, that he acts right? or how is it poſſible even to conceive that he ſhould act wrong? yet theſe aſſertions are intelligible and ſignificant. The caſe is this: by virtue of the two principles, that God wills the happineſs of his creatures, and that the will of God is the meaſure of right and wrong, we arrive at certain concluſions; which concluſions become rules; and we ſoon learn to pronounce actions right or wrong, according as they agree or diſagree with our rules, without looking any farther; and when the habit is once eſtabliſhed of ſtopping at the rules, we can go back and compare with theſe rules even the divine conduct itſelf, and yet it may be true (only not obſerved by us at the time) that the rules themſelves are deduced from the divine will.

Right is a quality of perſons or actions.

Of perſons; as when we ſay, ſuch a one has a "right" to this eſtate; parents have a "right" to reverence from their children; the king to allegiance from his ſubjects; maſters have a "right" to their ſervants' labour; a man hath not a "right" over his own life.

Of actions; as in ſuch expreſſions as the following: it is "right" to puniſh murder with death; his behaviour on that occaſion was "right;" it is not "right" to ſend an unfortunate debtor to jail; he did or acted "right," who gave up his place rather than vote againſt his judgment.

In this latter ſet of expreſſions, you may ſubſtitute the definition of right above given for the term itſelf, v. g. it "is conſiſtent with the will of God" to puniſh murder with death—his behaviour on that occaſion was "conſiſtent with the will of God"—it is not "conſiſtent with the will of God" to ſend an unfortunate debtor to jail—he did, or acted "conſiſtently with the will of God," who gave up his place rather than vote againſt his judgment.

In the former ſet, you muſt vary the phraſe a little, when you introduce the definition inſtead of the term. Such a one has a "right" to this eſtate, that is, it is "conſiſtent with the will of God," that ſuch a one ſhould have it—parents have a "right" to reverence from their children, that is, it is "conſiſtent with the will of God," that children ſhould reverence their parents; and the ſame of the reſt.

Chapter X.

THE DIVISION OF RIGHTS.

RIGHTS, when applied to perſons, are,
Natural or adventitious,
Alienable or unalienable,
Perfect or imperfect.

First, Rights are natural or adventitious.

Natural rights are ſuch as would belong to a man, although there ſubſiſted in the world no civil government whatever.

Adventitious rights are ſuch as would not.

Natural rights are, a man's right to his life, limbs, and liberty; his right to the produce of his perſonal labour; to the uſe in common with others, of air, light, water. If a thouſand different perſons, from a thouſand different corners of the world, were caſt together upon a deſert iſland, they would from the firſt be every one entitled to theſe rights.

Adventitious rights are, the right of a king over his ſubjects; of a general over his ſoldiers; of a judge over the life and liberty of a priſoner; a right to elect or appoint magiſtrates, to impoſe taxes, decide diſputes, direct the deſcent or diſpoſition of property; a right, in a word, in any one man or particular body of men, to make laws and regulations for the reſt. For none of theſe rights would exiſt in the newly inhabited iſland.

And here it will be aſked, how adventitious rights are created; or, which is the ſame thing, how any new rights can accrue from the eſtabliſhment of civil ſociety; as rights of all kinds, we remember, depend upon the will of God, and civil ſociety is but the ordinance and inſtitution of man? For the ſolution of this difficulty, we muſt return to our firſt principles. God wills the happineſs of mankind, and the exiſtence of civil ſociety, as conducive to that happineſs. Conſequently, many things, which are uſeful for the ſupport of civil ſociety in general, or for the conduct and converſation of particular ſocieties already eſtabliſhed, are, for that reaſon, "conſiſtent with the will of God," or "right," which without that reaſon, i. e. without the eſtabliſhment of civil ſociety, would not have been ſo.

From whence alſo it appears, that adventitious rights, though immediately derived from human appointment, are not for that reaſon leſs ſacred than natural rights, nor the obligation to reſpect them leſs cogent. They both ultimately rely upon the ſame authority, the will of God. Such a man claims a right to a particular eſtate. He can ſhew, it is true, nothing for his right, but a rule of the civil community to which he belongs; and this rule may be arbitrary, capricious and abſurd. Notwithſtanding all this, there would be the ſame ſin in diſpoſſeſſing the man of his eſtate by craft or violence, as if it had been aſſigned to him, like the partition of the country amongſt the twelve tribes, by the immediate deſignation and appointment of Heaven.

SECONDLY, Rights are alienable or unalienable. Which terms explain themſelves.

The right we have to moſt of thoſe things, which we call property, as houſes, lands, money, &c. is alienable.

The right of a prince over his people, of a huſband over his wife, of a maſter over his ſervant, is generally and naturally unalienable.

The diſtinction depends upon the mode of acquiring the right. If the right originate from a contract, and be limited to the *perſon* by the expreſs terms of the contract, or by the common interpretation of ſuch contracts, (which is equivalent to an expreſs ſtipulation) or by a *perſonal condition* annexed to the right, then it is unalienable. In all other caſes it is alienable.

The right to civil liberty is alienable; though in the vehemence of men's zeal for it, and in the language of ſome political remonſtrances, it has often been pronounced to be an unalienable right. The true reaſon why mankind hold in deteſtation the memory of thoſe who have ſold their liberty to a tyrant, is, that together with their own, they ſold commonly, or endangered the liberty of others; which certainly they had no right to diſpoſe of.

THIRDLY, Rights are perfect or imperfect.

Perfect rights may be aſſerted by force, or, what in civil ſociety comes into the place of private force, by courſe of law.

Imperfect rights may not.

Examples of perfect rights. A man's right to his life, perſon, houſe; for if theſe be attacked, he may repel the attack by inſtant violence, or puniſh the aggreſſor by law: a man's right to his eſtate, furniture, clothes, money, and to all ordinary articles of property; for if they be injuriouſly taken from him, he may compel the author of the injury to make reſtitution or ſatisfaction.

Examples of imperfect rights. In elections or appointments to offices, where the qualifications are preſcribed, the beſt qualified candidate has a right to ſucceſs; yet if he be rejected, he has no remedy. He can neither ſeize the office by force, nor obtain any redreſs at law; his right therefore is imperfect. A poor neighbour has a right to relief; yet if it be refuſed him, he muſt not extort it. A benefactor has a right to returns of gratitude from the perſon he has obliged; yet if he meet with none, he muſt acquieſce. Children have a right to affection and education from their parents; and parents, on their part, to duty and reverence from their children; yet if theſe rights be on either ſide withholden, there is no compulſion to enforce them.

It may be at firſt view difficult to apprehend how a perſon ſhould have a right to a thing, and yet have no right to uſe the means neceſſary to obtain it. This difficulty, like moſt others in morality, is reſolvable into the neceſſity of general rules. The reader recollects, that a perſon is ſaid to have a "right" to a thing, when it is "conſiſtent with the will of God" that he ſhould poſſeſs it. So that the queſtion is reduced to this; how it comes to paſs, that it ſhould be conſiſtent with the will of God, that a perſon ſhould poſſeſs a thing, and yet not be conſiſtent with the ſame will that he ſhould uſe force to obtain it? The anſwer is, that by reaſon of the indeterminateneſs, either of the object, or of the circumſtances of the right, the permiſſion of force in this caſe would, in its conſequence, lead to the permiſſion of force in other caſes, where there exiſted no right at all. The candidate above deſcribed has, no doubt, a right to ſucceſs; but his right depends upon his qualifications, for inſtance, upon his comparative virtue, learning, &c. there muſt be ſomebody therefore to compare them. The exiſtence, degree, and reſpective importance of theſe qualifications are all indeterminate; there muſt be ſomebody therefore to determine them. To allow the candidate to demand ſucceſs by force, is to make him the judge of his own qualifications. You cannot do this, but you muſt make all other candidates the ſame; which would open a door to demands without number, reaſon, or right. In like manner, a poor man has a right to relief from the rich; but the mode, ſeaſon, and quantum of that relief, who ſhall contribute to it, or how much, are not aſcertained. Yet theſe points muſt be aſcertained, before a claim to relief can be proſecuted by force. For to allow the poor to aſcertain them for themſelves, would be to expoſe property to ſo many of theſe claims, that it would loſe its value, or ceaſe indeed to be property. The ſame obſervation holds of all other caſes of imperfect rights; not to mention, that in the inſtances of gratitude, affection, reverence, and the like, force is excluded by the very idea of the duty, which muſt be voluntary, or not at all.

Wherever the right is imperfect, the correſponding obligation is ſo too. I am obliged to prefer the beſt candidate, to relieve the poor, be grateful to my benefactors, take care of my children, and reverence my parents; but in all theſe caſes, my obligation, like their right, is imperfect.

I call theſe obligations "imperfect," in conformity to the eſtabliſhed language of writers upon the ſubject. The term, however, ſeems ill choſen on this account, that it leads many to imagine, that there is leſs guilt in the violation of an imperfect obligation, than of a perfect one; which is a groundleſs notion. For an obligation being perfect or imperfect, determines only whether violence may or may not be employed to enforce it; and determines nothing elſe. The degree of guilt incurred by violating the obligation is a different thing. It is determined by circumſtances altogether independent of this diſtinction. A man, who by a partial, prejudiced, or corrupt vote, diſappoints a worthy candidate of a ſtation in life, upon which his hopes, poſſibly, or livelihood depends, and who thereby grievouſly diſcourages merit and emulation in others, commits, I am perſuaded, a much greater crime, than if he filched a book out of a library, or picked a pocket of a handkerchief; though, in the one caſe, he violates only an imperfect right, in the other a perfect one.

As poſitive precepts are often indeterminate in their extent, and as the indeterminateneſs of an obligation is that which makes it imperfect; it comes to paſs, that poſitive precepts commonly produce an imperfect obligation.

Negative precepts or prohibitions, being generally preciſe, conſtitute accordingly a perfect obligation.

The fifth commandment is poſitive, and the duty which reſults from it is imperfect.

The ſixth commandment is negative, and impoſes a perfect obligation.

Religion and virtue find their principal exerciſe amongſt the imperfect obligations; the laws of civil ſociety taking pretty good care of the reſt.

Chapter XI.

THE GENERAL RIGHTS OF MANKIND.

By the General Rights of Mankind, I mean the rights, which belong to the ſpecies collectively; the original ſtock, as I may ſay, which they have ſince diſtributed among themſelves.

Theſe are,

I. A right to the fruits or vegetable produce of the earth.

The inſenſible parts of the creation are incapable of injury; and it is nugatory to inquire into the right, where the uſe can be attended with no injury.

But it may be worth obſerving, for the ſake of an inference which will appear below, that, as God has created us with a want and deſire of food, and provided things ſuited by their nature to ſuſtain and ſatisfy us, we may fairly preſume, that he intended we ſhould apply theſe things to that purpoſe.

II. A right to the fleſh of animals.

This is a very different claim from the former. Some excuſe ſeems neceſſary for the pain and loſs which we occaſion to brutes, by reſtraining them of their liberty, mutilating their bodies, and, at laſt, putting an end to their lives, which we ſuppoſe to be the whole of their exiſtence, for our pleaſure or conveniency.

The reaſons alleged in vindication of this practice, are the following: that the ſeveral ſpecies of brutes being created to prey upon one another, affords a kind of analogy to prove that the human ſpecies were intended to feed upon them; that, if let alone, they would over-run the earth, and exclude mankind from the occupation of it; that they are requited for what they ſuffer at our hands, by our care and protection.

Upon which reaſons I would obſerve, that *the analogy* contended for is extremely lame; ſince brutes have no power to ſupport life by any other means, and ſince we have; for the whole human ſpecies might ſubſiſt entirely upon fruit, pulſe, herbs, and roots, as many tribes of Hindoos actually do. The two other reaſons may be valid reaſons, as far as they go; for, no doubt, if man had been ſupported entirely by vegetable food, a great part of thoſe animals which die to furniſh his table, would never have lived; but they by no means juſtify our right over the lives of brutes to the extent in which we exerciſe it. What danger is there, for inſtance, of fiſh interfering with us, in the occupation of their element? Or what do *we* contribute to their ſupport or preſervation?

It ſeems to me that it would be difficult to defend this right, by any argument which the light and order of nature afford; and that we are beholden for it, to the permiſſion recorded in ſcripture, Gen. ix. 1, 2, 3: "And God bleſſed Noah and his ſons, and ſaid unto them, Be fruitful, and multiply, and repleniſh the earth; and the fear of you, and the dread of you, ſhall be upon every beaſt of the earth, and upon every fowl of the air, and upon all that moveth upon the earth, and upon all the fiſhes of the ſea; into your hand are they delivered: every moving thing ſhall be meat for you; even as the green herb, have I given you all things." To Adam and his poſterity had been granted at the creation "every green herb for meat," and nothing more. In the laſt clauſe of the paſſage now produced, the old grant is recited, and extended to the fleſh of animals, "even as the green herb, have I given you all things." But this was not till after the flood; the inhabitants of the antediluvian world therefore, had no ſuch permiſſion that we know of. Whether they actually refrained from the fleſh of animals, is another queſtion. Abel, we read, was a keeper of ſheep; and for what purpoſe he kept them, except for food, is difficult to ſay, (unleſs it were ſacrifices:) might not, however, ſome of the ſtricter ſects among the antediluvians be ſcrupulous as to this point? and might not Noah and his family be of this deſcription? for it is not probable that God would publiſh a permiſſion, to authorize a practice which had never been diſputed.

Wanton, and, what is worſe, ſtudied cruelty to brutes, is certainly wrong, as coming within none of theſe reaſons.

From reaſon then, or revelation, or from both together, it appears to be God Almighty's intention, that the productions of the earth ſhould be applied to the ſuſtentation of human life. Conſequently, all waſte and miſapplication of theſe productions, is contrary to the divine intention and will, and therefore wrong, for the ſame reaſon that any other crime is ſo. Such as, what is related of William the Conqueror, the converting of twenty manors into a foreſt for hunting; or, which is not much better, ſuffering them to continue in that ſtate; or the letting of large tracts of land lie barren, becauſe the owner cannot cultivate them, nor will part with them to thoſe who can; or deſtroying, or ſuffering to periſh, great part of an article of human proviſion, in order to enhance the price of the remainder, which is ſaid to have been, till lately, the caſe with fiſh caught upon the Engliſh coaſt; or diminiſhing the breed of animals, by a wanton, or improvident conſumption of the young, as of the ſpawn of ſhell-fiſh, or the fry of ſalmon, by the uſe of unlawful nets, or at improper ſeaſons: to this head may alſo be referred, what is the ſame evil in a ſmaller way, the expending of human food on ſuperfluous dogs or horſes; and laſtly, the reducing of the quantity in order to alter the quality, and to alter it generally for the worſe; as the diſtillation of ſpirits from bread-corn, the boiling down of ſolid meat for ſauces, eſſences, &c.

This ſeems to be the leſſon which our Saviour, after his manner, inculcates, when he bids his diſciples "gather up the fragments, that nothing be loſt." And it opens, indeed, a new field of duty. Schemes of wealth or profit, prompt the active part of mankind to caſt about how they may convert their property to the moſt advantage: and their own advantage, and that of the public, commonly concur. But it has not as yet entered into the minds of mankind, to reflect that it is a *duty*, to add what we can to the common ſtock of proviſion, by extracting out of our eſtates the moſt they will yield; or that it is any ſin to neglect this.

From the ſame intention of God Almighty, we alſo deduce another concluſion, namely, "that nothing ought to be made excluſive property, which can be conveniently enjoyed in common."

It is the general intention of God Almighty, that the produce of the earth be applied to the uſe of man. This appears from the conſtitution of nature, or, if you will, from his expreſs declaration; and this is all that appears hitherto. Under this general donation, one man has the ſame right as another. You pluck an apple from a tree, or take a lamb out of a flock, for your immediate uſe and nouriſhment, and I do the ſame; and we both plead for what we do, the general intention of the Supreme Proprietor. So far all is right; but you cannot claim the whole tree, or the whole flock, and exclude me from any ſhare of them, and plead this general intention for what you do. The plea will not ſerve you: you muſt ſhew ſomething more. You muſt ſhew, by probable arguments, at leaſt, that it is God's intention that theſe things ſhould be parcelled out to individuals; and that the eſtabliſhed diſtribution, under which you claim, ſhould be upheld. Shew me this, and I am ſatisfied. But until this be ſhewn, the general intention, which has been made appear, and which is all that does appear, muſt prevail; and under that, my title is as good as yours. Now there is no argument to induce ſuch a preſumption but one, that the thing cannot be enjoyed at all, or enjoyed with the ſame, or with nearly the ſame advantage, while it continues in common, as when appropriated. This is true, where there is not enough for all, or where the article in queſtion requires care or labour in the production or preſervation: but where no ſuch reaſon obtains, and the thing is in its nature capable of being enjoyed by as many as will, it ſeems an arbitrary uſurpation upon the rights of mankind, to confine the uſe of it to any.

If a medicinal ſpring were diſcovered in a piece of ground which was private property, copious enough for every purpoſe which it could be applied to, I would award a compenſation to the owner of the field, and a liberal profit to the author of the diſcovery, eſpecially, if he had beſtowed pains or expenſe upon the ſearch; but I queſtion, whether any human laws would be juſtified, or would juſtify the owner, in prohibiting mankind from the uſe of the water, or ſetting ſuch a price upon it, as would almoſt amount to a prohibition.

If there be fiſheries, which are inexhauſtible; as the cod-fiſhery upon the Banks of Newfoundland, and the herring-fiſhery on the Britiſh ſeas are ſaid to be; then all thoſe conventions, by which one or two nations claim to themſelves, and guaranty to each other, the excluſive enjoyment of theſe fiſheries, are ſo many encroachments upon the general rights of mankind.

Upon the ſame principle may be determined a queſtion, which makes a great figure in books of natural law, *utrum mare ſit liberum?* that is, as I underſtand it, whether the excluſive right of navigating particular ſeas, or a control over the navigation of theſe ſeas can be claimed, conſiſtently with the law of nature, by any nation? What is neceſſary for each nation's ſafety we allow; as their own bays, creeks, and harbours, the ſea contiguous to, that is, within cannon ſhot, or three leagues of their coaſt: and upon this principle of ſafety (if upon any principle) muſt be defended, the claim of the Venetian ſtate to the Adriatic, of Denmark to the Baltic ſea, and of Great Britain to the ſeas which inveſt the iſland. But, when Spain aſſerts a right to the Pacific ocean, or Portugal to the Indian ſeas, or when any nation extends is pretenſions much beyond the limits of its own territories, they erect a claim, which interferes with the benevolent deſigns of Providence, and which no human authority can juſtify.

III. Another right, which may be called a general right, as it is incidental to every man who is in a ſituation to claim it, is the right of extreme neceſſity: by which is meant, a right to uſe or deſtroy another's property, when it is neceſſary for our own preſervation to do ſo; as a right to take without or againſt the owner's leave, the firſt food, clothes, or ſhelter we meet with, when we are in danger of periſhing through want of them; a right to throw goods overboard, to ſave the ſhip; or to pull down a houſe, in order to ſtop the progreſs of a fire; and a few other inſtances of the ſame kind. Of which right the foundation ſeems to be this, that, when property was firſt inſtituted, the inſtitution was not intended to operate to the deſtruction of any: therefore when ſuch conſequences would follow, all regard to it is ſuperſeded. Or rather, perhaps, theſe are the few caſes, where the particular conſequence exceeds the general conſequence; where the remote miſchief reſulting from the violation of the general rule, is overbalanced by the immediate advantage.

Reſtitution however is due, when in our power; becauſe the laws of property are to be adhered to, ſo far as conſiſts with ſafety; and becauſe reſtitution, which is one of thoſe laws, ſuppoſes the danger to be over. But what is to be reſtored? not the full value of property deſtroyed, but what it was worth at the time of deſtroying it; which, conſidering the danger it was in of periſhing, might be very little.

BOOK III.

Relative Duties.

PART I.

OF RELATIVE DUTIES WHICH ARE DETERMINATE.

Chapter I.

OF PROPERTY.

IF you ſhould ſee a flock of pigeons in a field of corn; and if (inſtead of each picking where, and what it liked, taking juſt as much as it wanted and no more) you ſhould ſee ninety-nine of them gathering all they got into a heap; reſerving nothing to themſelves, but the chaff and refuſe; keeping this heap for one, and that the weakeſt perhaps and worſt pigeon of the flock; ſitting round, and looking on all the winter, whilſt this one was devouring, throwing about and waſting it; and, if a pigeon more hardy or hungry than the reſt, touched a grain of the hoard, all the others inſtantly flying upon it, and tearing it to pieces: if you ſhould ſee this, you would ſee nothing more, than what is every day practiſed and eſtabliſhed among men. Among men you ſee the ninety and nine, toiling and ſcraping together a heap of ſuperfluities for one; getting nothing for themſelves all the while, but a little of the coarſeſt of the proviſion, which their own labour produces; and this one too, oftentimes the feebleſt and worſt of the whole ſet, a child, a woman, a madman or a fool; looking quietly on, while they ſee the fruits of all their labour ſpent or ſpoiled; and if one of them take or touch a particle of it, the others join againſt him, and hang him for the theft.

Chapter II.

THE USE OF THE INSTITUTION OF PROPERTY.

THERE muſt be ſome very important advantages to account for an inſtitution, which in one view of it is ſo paradoxical and unnatural.

The principal of theſe advantages are the following:

I. It increaſes the produce of the earth.

The earth, in climates like ours, produces little without cultivation; and none would be found willing to cultivate the ground if others were to be admitted to an equal ſhare of the produce. The ſame is true of the care of flocks and herds of tame animals.

Crabs and acorns, red deer, rabits, game, and fiſh, are all we ſhould have to ſubſiſt upon in this country, if we truſted to the ſpontaneous productions of the ſoil: and it fares not much better with other countries. A nation of North American ſavages, conſiſting of two or three hundred, will take up, and be half ſtarved upon a tract of land, which in Europe, and with European management, would be ſufficient for the maintenance of as many thouſands.

In ſome fertile ſoils, together with great abundance of fiſh upon their coaſts, and in regions where clothes are unneceſſary, a conſiderable degree of population may ſubſiſt without property in land; which is the caſe at Otaheite: but in leſs favoured ſituations, as in the country of New-Zealand, though this ſort of property obtain in a ſmall degree, the inhabitants, for want of a more ſecure and regular eſtabliſhment of it, are driven ofttimes by the ſcarcity of proviſion to devour one another.

II. It preſerves the produce of the earth to maturity.

We may judge what would be the effects of a community of right to the productions of the earth, from the trifling ſpecimens, which we ſee of it at preſent. A cherry-tree in a hedge-row, nuts in a wood, the graſs of an unſtinted paſture, are ſeldom of much advantage to any body, becauſe people do not wait for the proper ſeaſon of reaping them. Corn, if any were ſown, would never ripen; lambs and calves would never grow up to ſheep and cows, becauſe the firſt perſon that met them would reflect, that he had better take them as they are, than leave them for another.

III. It prevents conteſts.

War and waſte, tumult and confuſion, muſt be unavoidable and eternal, where there is not enough for all, and where there are no rules to adjuſt the diviſion.

IV. It improves the conveniency of living.

This it does two ways. It enables mankind to divide themſelves into diſtinct profeſſions; which is impoſſible, unleſs a man can exchange the productions of his own art for what he wants from others; and exchange implies property. Much of the advantages of civilized over ſavage life depends upon this. When a man is from neceſſity his own tailor, tentmaker, carpenter, cook, huntſman, and fiſherman, it is not probable that he will be expert at any of his callings. Hence, the rude habitations, furniture, clothing, and implements of ſavages; and the tedious length of time which all their operations require.

It likewiſe encourages thoſe arts, by which the accommodations of human life are ſupplied, by appropriating to the artiſt the benefit of his diſcoveries and improvements; without which appropriation, ingenuity will never be exerted with effect.

Upon theſe ſeveral accounts we may venture, with a few exceptions, to pronounce, that even the pooreſt and the worſt provided, in countries where property and the conſequences of property prevail, are in a better ſituation, with reſpect to food, raiment, houſes, and what are called the neceſſaries of life, than *any* are, in places where moſt things remain in common.

The balance, therefore, upon the whole, muſt preponderate in favour of property with manifeſt and great exceſs.

Inequality of property in the degree in which it exiſts in moſt countries in Europe, abſtractedly conſidered, is an evil: but it is an evil, which flows from thoſe rules concerning the acquiſition and diſpoſal of property, by which men are incited to induſtry, and by which the object of their induſtry is rendered ſecure and valuable. If there be any great inequality unconnected with this origin, it ought to be corrected.

Chapter III.

THE HISTORY OF PROPERTY.

THE firſt objects of property were the fruits which a man gathered, and the wild animals he caught; next to theſe, the tents or houſes which he built, the tools he made uſe of to catch and prepare his food; and afterwards weapons of war and offence. Many of the ſavage tribes in North America have advanced no farther than this yet; for they are ſaid to reap their harveſt, and return the produce of their market with foreigners into the common hoard or treaſury of the tribe. Flocks and herds of tame animals ſoon became property; *Abel*, the ſecond from *Adam*, was a keeper of ſheep ; ſheep and oxen, camels and aſſes, compoſed the wealth of the *Jewiſh* patriarchs, as they do ſtill of the modern *Arabs*. As the world was firſt peopled in the Eaſt, where there exiſted a great ſcarcity of water, wells probably were next made property ; as we learn, from the frequent and ſerious mention of them in the Old Teſtament, the contentions and treaties about them,* and from its being recorded, among the moſt memorable achievements of very eminent men, that they dug or diſcovered a well. Land, which is now ſo important a part of property, which alone our laws call *real* property, and regard upon all occaſions with ſuch peculiar attention, was probably not made property in any country, till long after the inſtitution of many other ſpecies of property, that is, till the country became populous, and tillage began to be thought of. The firſt partition of an eſtate which we read of, was that which took place between *Abram* and *Lot ;* and was one of the ſimpleſt imaginable : "If thou wilt take the left hand, then I will go to the right ; or if thou depart to the right hand, then I will go to the left." There are no traces of property in land in *Cæſar's* account of *Britain ;* little of it in the hiſtory of the *Jewiſh* patriarchs ; none of it found amongſt the nations of *North America ;* the *Scythians* are expreſsly ſaid to have appropriated their cattle and houſes, but to have left their land in common. Property in immoveables continued at firſt no longer than the occupation ; that is, ſo long as a man's family continued in poſſeſſion of a cave, or his flocks depaſtured upon a neighbouring hill, no one attempted, or thought he had a right, to diſturb or drive them out : but when the man quitted his cave, or changed his paſture, the firſt who found them unoccupied, entered upon them, by the ſame title as his predeceſſor's ; and made way in his turn, for any one that happened to ſucceed him. All more permanent property in land, was probably poſterior to civil government and to laws; and therefore ſettled by theſe, or according to the will of the reigning chief.

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* Gen. xxi. 25. xxvi. 18.

Chapter IV.

IN WHAT THE RIGHT OF PROPERTY IS FOUNDED.

WE now ſpeak of Property in Land: and there is a difficulty in explaining the origin of this property, conſiſtently with the law of nature; for the land was once no doubt common, and the queſtion is, how any particular part of it could juſtly be taken out of the common, and ſo appropriated to the firſt owner, as to give him a better right to it then others; and what is more, a right to exclude all others from it.

Moraliſts have given many different accounts of this matter; which diverſity alone perhaps is a proof that none of them are ſatisfactory.

One tells us that mankind, when they ſuffered a particular perſon to occupy a piece of ground, by tacit conſent relinquiſhed their right to it; and as the piece of ground belonged to mankind collectively, and mankind thus gave up their right to the firſt peaceable occupier, it thenceforward became his property, and no one afterwards had a right to moleſt him in it.

The objection to this account is, that conſent can never be preſumed from ſilence, where the perſon whoſe conſent is required knows nothing about the matter; which muſt have been the caſe with all mankind, except the neighbourhood of the place where the appropriation was made. And to ſuppoſe that the piece of ground previouſly belonged to the neighbourhood, and that they had a juſt power of conferring a right to it upon whom they pleaſed, is to ſuppoſe the queſtion reſolved, and a partition of land to have already taken place.

Another ſays, that each man's limbs and labour are his own excluſively; that, by occupying a piece of ground, a man inſeparably mixes his labour with it, by which means the piece of ground becomes thenceforward his own, as you cannot take it from him, without depriving him at the ſame time of ſomething which is indiſputably *his*.

This is Mr. LOCKE's ſolution; and ſeems indeed a fair reaſon, where the value of the labour bears a conſiderable proportion to the value of the thing; or where the thing derives its chief uſe and value from the labour. Thus, game and fiſh, though they be common, whilſt at large in the woods or water, inſtantly become the property of the perſon who catches them; becauſe an animal, when caught, is much more valuable than when at liberty; and this increaſe of value, which is inſeparable from and makes a great part of the whole value, is ſtrictly the property of the fowler, or fiſherman, being the produce of his perſonal labour. For the ſame reaſon, wood or iron, manufactured into utenſils, become the property of the manufacturer; becauſe the value of the workmanſhip far exceeds that of the materials. And upon a ſimilar principle, a parcel of unappropriated ground, which a man ſhould pare, burn, plough, harrow, and ſow, for the production of corn, would juſtly enough be thereby made his own. But this will hardly hold, in the manner it has been applied, of taking a ceremonious poſſeſſion of a tract of land, as navigators do of new diſcovered iſlands, by erecting a ſtandard, engraving an inſcription, or publiſhing a proclamation to the birds and beaſts; or of turning your cattle into a piece of ground, ſetting up a land mark, digging a ditch, or planting a hedge round it. Nor will even the clearing, manuring, and ploughing of a field, give the firſt occupier a right in perpetuity after this cultivation and all the effects of it are ceaſed.

Another, and in my opinion, a better account of the firſt right of owner-ſhip, is the following: that, as God has provided theſe things for the uſe of all, he has of conſequence given each leave to take of them what he wants; by virtue therefore of this leave, a man may appropriate what he ſtands in need of to his own uſe, without aſking or waiting for the conſent of others; in like manner, as when an entertainment is provided for the freeholders of a county, each freeholder goes, and eats and drinks what he wants or chooſes, without having or waiting for the conſent of the other gueſts.

But then, this reaſon juſtifies property, as far as neceſſaries alone, or, at the moſt, as far as a competent proviſion for our natural exigencies. For, in the entertainment we ſpeak of (allowing the compariſon to hold in all points) although every particular freeholder may ſit down and eat till he be ſatisfied, without any other leave than that of the maſter of the feaſt, or any other proof of that leave, than the general invitation, or the manifeſt deſign with which the entertainment is provided; yet you would hardly permit any one to fill his pockets, or his wallet, or to carry away with him a quantity of proviſion to be hoarded up, or waſted, or given to his dogs, or ſtewed down into ſauces, or converted into articles of ſuperfluous luxury; eſpecially, if by ſo doing, he pinched the gueſts at the lower end of the table.

Theſe are the accounts that have been given of the matter by the beſt writers upon the ſubject; but, were theſe accounts perfectly unexceptionable, they would none of them, I fear, avail us in vindicating our preſent claims of property in land, unleſs it were more probable than it is, that our eſtates were actually acquired at firſt, in ſome of the ways which theſe accounts ſuppoſe; and that a regular regard had been paid to juſtice in every ſucceſſive tranſmiſſion of them ſince: for if one link in the chain fail, every title poſterior to it falls to the ground.

The real foundation of our right is, THE LAW OF THE LAND.

It is the intention of God, that the produce of the earth be applied to the uſe of man; this intention cannot be fulfilled without eſtabliſhing property; it is conſiſtent therefore with his will, that property be eſtabliſhed. The land cannot be divided into ſeparate property, without leaving it to the law of the country to regulate that diviſion; it is conſiſtent therefore with the ſame will, that the law ſhould regulate the diviſion; and conſequently, "conſiſtent with the will of God," or, "right," that I ſhould poſſeſs that ſhare which theſe regulations aſſign me.

By whatever circuitous train of reaſoning you attempt to derive this right, it muſt terminate at laſt in the will of God; the ſtraiteſt, therefore, and ſhorteſt way of arriving at this will, is the beſt.

Hence it appears, that my right to an eſtate does not at all depend upon the manner or juſtice of the original acquiſition; nor upon the juſtice of each ſubſequent change of poſſeſſion. It is not, for inſtance, the leſs, nor ought it to be impeached, becauſe the eſtate was taken poſſeſſion of at firſt by a family of aboriginal Britons, who happened to be ſtronger than their neighbours; nor becauſe the Britiſh poſſeſſor was turned out by a Roman, or the Roman by a Saxon invader; nor becauſe it was ſeized, without colour of right or reaſon, by a follower of the Norman adventurer; from whom, after many interruptions of fraud and violence, it has at length devolved to me.

Nor does the owner's right depend upon the *expediency* of the law which gives it to him. On one ſide of a brook, an eſtate deſcends to the eldeſt ſon; on the other ſide, to all the children alike. The right of the claimants under both laws of inheritance is equal; though the expediency of ſuch oppoſite rules muſt neceſſarily be different.

The principles we have laid down upon this ſubject apparently tend to a concluſion of which a bad uſe is apt to be made. As the right of property depends upon the law of the land, it ſeems to follow, that a man has a right to keep and take every thing, which the law will allow him to keep and take; which in many caſes will authorize the moſt flagitious chicanery. If a creditor upon a ſimple contract neglect to demand his debt for ſix years, the debtor may refuſe to pay it: would it be *right* therefore to do ſo, where he is conſcious of the juſtice of the debt? If a perſon, who is under twenty-one years of age, contract a bargain (other than for neceſſaries) he may avoid it by pleading his minority: but would this be a fair plea, where the bargain was originally juſt? The diſtinction to be taken in ſuch caſes is this: With the law, we acknowledge, reſides the diſpoſal of property; ſo long therefore as we keep within the deſign and intention of the law, that law will juſtify us, as well *in foro conſcientiæ*, as *in foro humano*, whatever be the equity or expediency of the law itſelf. But when we convert to one purpoſe, a rule or expreſſion of law, which is intended for another purpoſe; then, we plead in our juſtification, not the intention of the law, but the words; that is, we plead a dead letter, which can ſignify nothing; for words *without* meaning or intention have no force or effect in juſtice, much leſs words taken *contrary* to the meaning and intention of the ſpeaker or writer. To apply this diſtinction to the examples juſt now propoſed: in order to protect men againſt antiquated demands, from which it is not probable they ſhould have preſerved the evidence of their diſcharge, the law preſcribes a limited time to certain ſpecies of private ſecurities, beyond which, it will not enforce them, or lend its aſſiſtance to the recovery of the debt. If a man be ignorant, or dubious of the juſtice of the demand upon him, he may conſcientiouſly plead this limitation; becauſe *he applies the rule of law to the purpoſe for which it was intended.* But when he refuſes to pay a debt, of the reality of which he is conſcious, he cannot, as before, plead the intention of the ſtatute, and the ſupreme authority of law, unleſs he could ſhew, that the law *intended* to interpoſe its ſupreme authority, to acquit men of debts, of the exiſtence and juſtice of which they were themſelves ſenſible. Again, to preſerve youth from the practices and impoſitions, to which their inexperience expoſes them, the law compels the payment of no debts incurred within a certain age, nor the performance of any engagements, except for ſuch neceſſaries as are ſuited to their condition and fortunes. If a young perſon therefore perceive that he has been practiſed or impoſed upon, he may honeſtly avail himſelf of the privilege of his non-age to defeat the circumvention. But, if he ſhelter himſelf under this privilege, to avoid a fair obligation, or an equitable contract, he extends the privilege to a caſe, in which it is not allowed by intention of law, and in which conſequently it does not, in natural juſtice, exiſt.

As property is the principal ſubject of juſtice, or "of the determinate relative duties," we have put down what we had to ſay upon *it* in the firſt place: we now proceed to ſtate theſe duties in the beſt order we can.

Chapter V.

PROMISES.

I. *FROM whence the obligation to perform Promiſes ariſes.*

II. *In what ſenſe Promiſes are to be interpreted.*

III. *In what caſes Promiſes are not binding.*

I. *From whence the obligation to perform Promiſes ariſes.*

They who argue from innate moral principles, ſuppoſe a ſenſe of the obligation of promiſes to be one of them; but without aſſuming this, or any thing elſe, without proof, the obligation to perform promiſes may be deduced from the neceſſity of ſuch a conduct, to the well-being, or the exiſtence, indeed, of human ſociety.

Men act from expectation; expectation is, in moſt caſes, determined by the aſſurances and engagements which we receive from others. If no dependence could be placed upon theſe aſſurances, it would be impoſſible to know what judgment to form of many future events, or how to regulate our conduct with reſpect to them. Confidence, therefore, in promiſes, is eſſential to the intercourſe of human life; becauſe, without it, the greateſt part of our conduct would proceed upon chance. But there could be no confidence in promiſes, if men were not obliged to perform them; the obligation therefore to perform promiſes is eſſential, to the ſame end, and in the ſame degree.

Some may imagine, that, if this obligation were ſuſpended, a general caution and mutual diſtruſt would enſue, which might do as well; but this is imagined, without conſidering, how every hour of our lives we truſt to, and depend upon others; and how impoſſible it is, to ſtir a ſtep, or, what is worſe, to ſit ſtill a moment, without ſuch truſt and dependence. I am now writing at my eaſe, not doubting (or rather never diſtruſting, and therefore never thinking about it) but that the butcher will ſend in the joint of meat, which I ordered; that his ſervant will bring it; that my cook will dreſs it; that my footman will ſerve it up; and that I ſhall find it upon the table at one o'clock. Yet have I nothing for all this, but the promiſe of the butcher, and the implied promiſe of his ſervant and mine. And the ſame holds of the moſt important, as well as the moſt familiar occurrences of ſocial life. In the one the intervention of promiſes is formal, and is ſeen and acknowledged; our inſtance, therefore, is intended to ſhow it in the other, where it is not ſo diſtinctly obſerved.

II. *In what ſenſe Promiſes are to be interpreted.*

Where the terms of a promiſe admit of more ſenſes than one, the promiſe is to be performed "in that ſenſe in which the promiſer apprehended at the time that the promiſee received it."

It is not the ſenſe in which the promiſer actually intended it, that always governs the interpretation of an equivocal promiſe; becauſe at that rate, you might excite expectations which you never meant, nor would be obliged, to ſatisfy. Much leſs is it the ſenſe, in which the promiſee actually received the promiſe; for according to that rule, you might be drawn into engagements which you never deſigned to undertake. It muſt therefore be the ſenſe (for there is no other remaining) in which the promiſer believed that the promiſee accepted his promiſe.

This will not differ from the actual intention of the promiſer, where the promiſe is given without colluſion or reſerve; but we put the rule in the above form, to exclude evaſion in caſes in which the popular meaning of a phraſe, and the ſtrict grammatical ſignification of the words differ, or, in general, wherever the promiſer attempts to make his eſcape through ſome ambiguity in the expreſſions which he uſed.

Temures promiſed the garriſon of *Sebaſtia*, that, if they would ſurrender, *no blood ſhould be ſhed.* The garriſon ſurrendered; and *Temures* buried them all alive. Now *Temures* fulfilled the promiſe in one ſenſe, and in the ſenſe too in which he intended it at the time; but not in the ſenſe in which the garriſon of *Sebaſtia* actually received it, nor in the ſenſe in which *Temures* himſelf knew that the garriſon received it: which laſt ſenſe, according to our rule, was the ſenſe he was in conſcience bound to have performed it in.

From the account we have given of the obligation of promiſes, it is evident, that this obligation depends upon the *expectations* which we knowingly and voluntarily excite. Conſequently, any action or conduct towards another, which we are ſenſible excites expectations in that other, is as much a promiſe, and creates as ſtrict an obligation, as the moſt expreſs aſſurances. Taking, for inſtance, a kinſman's child, and educating him for a liberal profeſſion, or in a manner ſuitable only for the heir of a large fortune, as much obliges us to place him in that profeſſion, or to leave him ſuch a fortune, as if we had given him a promiſe to do ſo under our hands and ſeals. In like manner, a great man, who encourages an indigent retainer; or a miniſter of ſtate, who diſtinguiſhes and careſſes at his levee, one who is in a ſituation to be obliged by his patronage, engages by ſuch behaviour, to provide for him. This is the foundation of *tacit promiſes*.

You may either ſimply declare your preſent intention, or you may accompany your declaration with an engagement to abide by it, which conſtitutes a complete promiſe. In the firſt caſe, the duty is ſatisfied, if you were *ſincere*, that is, if you entertained at the time the intention you expreſſed, however ſoon or for whatever reaſon, you afterwards change it. In the latter caſe, you have parted with the liberty of changing. All this is plain; but it muſt be obſerved, that moſt of thoſe forms of ſpeech, which ſtrictly taken, amount to no more than declarations of preſent intention, do yet, in the uſual way of underſtanding them, excite the expectation, and therefore carry with them the force of abſolute promiſes. Such as, "I intend you this place." "I deſign to leave you this eſtate." "I purpoſe giving you my vote." "I mean to ſerve you." In which although the "intention," the "deſign," the "purpoſe," the "meaning," be expreſſed in words of the preſent time, yet you cannot afterwards recede from them, without a breach of good faith. If you chooſe therefore to make known your preſent intention, and yet to reſerve to yourſelf the liberty of changing it, you muſt guard your expreſſions by an additional clauſe, as, "I intend *at preſent—If I don't alter*"—or the like; and after all, as there can be no reaſon for communicating your intention, but to excite ſome degree of expectation or other, a wanton change of an intention which is once diſcloſed, always diſappoints ſomebody; and is always, for that reaſon, wrong.

There is, in ſome men, an infirmity with regard to promiſes, which often betrays them into great diſtreſs. From the confuſion, or heſitation, or obſcurity, with which they expreſs themſelves, eſpecially when overawed, or taken by ſurpriſe, they ſometimes encourage expectations, and bring upon themſelves demands, which poſſibly they never dreamed of. This is a want, not ſo much of integrity as of preſence of mind.

III. *In what caſes Promiſes are not binding.*

1. Promiſes are not binding, where the performance is *impoſſible.*

But obſerve, that the promiſer is guilty of a fraud, if he be privately aware of the impoſſibility, at the time of making the promiſe. For when any one promiſes a thing, he aſſerts his belief, at leaſt, of the poſſibility of performing it; as no one can accept or underſtand a promiſe under any other ſuppoſition. Inſtances of this ſort are the following. The miniſter promiſes a place, which he knows to be engaged or not at his diſpoſal—A father, in ſettling marriage articles, promiſes to leave his daughter an eſtate, which he knows to be entailed upon the heir male of his family—A merchant promiſes a ſhip, or ſhare of a ſhip, which he is ſecretly adviſed is loſt at ſea—An incumbent promiſes to reſign a living, being previouſly aſſured that his reſignation will not be accepted by the biſhop. The promiſer, as in theſe caſes, with knowledge of the impoſſibility, is juſtly anſwerable in an equivalent; but otherwiſe not.

When the promiſer himſelf occaſions the impoſſibility, it is neither more nor leſs than a direct breach of the promiſe; as when a ſoldier maims, or a ſervant diſables himſelf to get rid of his engagements.

2. Promiſes are not binding, where the performance is *unlawful.*

There are two caſes of this; one, where the unlawfulneſs is known to the parties, at the time of making the promiſe; as where an aſſaſſin promiſes his employer to diſpatch his rival or enemy; a ſervant to betray his maſter; a pimp to procure a miſtreſs; or a *friend* to give his aſſiſtance in a ſcheme of ſeduction. The parties in theſe caſes are not obliged to perform what the promiſe requires, *becauſe they were under a prior obligation to the contrary.* From which prior obligation, what is there to diſcharge them? Their promiſe—their own act and deed: but an obligation, from which a man can diſcharge himſelf, by his own act, is no obligation at all. The guilt therefore of ſuch promiſes lies in the making, not in the breaking them; and if, in the interval betwixt the promiſe and the performance, a man ſo far recover his reflection, as to repent of his engagements, he ought certainly to break through them.

The other caſe is, where the unlawfulneſs did not exiſt, or was not known, at the time of making the promiſe; as where a merchant promiſes his correſpondent abroad, to ſend him a ſhip-load of corn at a time appointed, and before the time arrives, an embargo is laid upon the exportation of corn—A woman gives a promiſe of marriage; before the marriage, ſhe diſcovers that her intended huſband is too nearly related to her, or that he has a wife yet living. In all ſuch caſes, where the contrary does not appear, it muſt be preſumed, that the parties ſuppoſed what they promiſed to be lawful, and that the promiſe proceeded entirely upon this ſuppoſition. The lawfulneſs therefore becomes a condition of the promiſe: and where the condition fails, the obligation ceaſes. Of the ſame nature was Herod's promiſe to his daughter-in-law, "that he would give her whatever ſhe aſked, even to the half of his kingdom." The promiſe was not unlawful, in the terms in which Herod delivered it; and when it became ſo by the daughter's choice, by her demanding "John the Baptiſt's head," Herod was diſcharged from the obligation of it, for the reaſon now laid down, as well as for that given in the laſt paragraph.

This rule, "that promiſes are void, where the performance is unlawful," extends alſo to imperfect obligations: for the reaſon of the rule holds of all obligations. Thus, if you promiſe a man a place, or your vote, and he afterwards render himſelf unfit to receive either, you are abſolved from the obligation of your promiſe; or, if a better candidate appear, and it be a caſe in which you are bound by oath, or otherwiſe, to govern yourſelf by the qualification, the promiſe muſt be broken through.

And here I would recommend, to young perſons eſpecially, a caution, from the neglect of which, many involve themſelves in embarraſſment and diſgrace; and that is, "never to give a promiſe which may interfere in the event with their duty;" for if it do ſo interfere, their duty muſt be diſcharged, though at the expenſe of their promiſe, and not unuſually of their good name.

The ſpecific performance of promiſes is reckoned a perfect obligation. And many caſuiſts have laid down, in oppoſition to what has been here aſſerted, that, where a perfect and an imperfect obligation claſh, the perfect obligation is to be preferred. For which opinion, however, there ſeems to be no reaſon, but what ariſes from the terms "perfect" and "imperfect," the impropriety of which has been remarked above. The truth is, of two contradictory obligations, that ought to prevail which is prior in point of time.

It is the *performance* being unlawful, and not any unlawfulneſs in the ſubject or motive of the promiſe, which deſtroys its validity; therefore a bribe, after the vote is given; the wages of proſtitution; the reward of any crime, after the crime is committed, ought, if promiſed, to be paid. For the ſin and miſchief, by this ſuppoſition, are over, and will be neither more nor leſs for the performance of the promiſe.

In like manner, a promiſe does not loſe its obligation, merely becauſe it proceeded from an *unlawful motive.* A certain perſon, in the lifetime of his wife, who was then ſick, had paid his addreſſes, and promiſed marriage to another woman; the wife died, and the woman demands performance of the promiſe. The man, who, it ſeems, had changed his mind, either felt or pretended doubts concerning the obligation of ſuch a promiſe, and referred his caſe to Biſhop SANDERSON, the moſt eminent in this kind of knowledge, of his time. Biſhop SANDERSON, after writing a diſſertation upon the queſtion, adjudged the promiſe to be void. In which, however, upon our principles, he was wrong; for, however criminal the affection might be, which induced the promiſe, the performance, when it was demanded, was lawful; which is the only lawfulneſs required.

A promiſe cannot be deemed unlawful, where it produces, when performed, no effect, beyond what would have taken place, had the promiſe never been made. And this is the ſingle caſe, in which the obligation of a promiſe will juſtify a conduct, which, unleſs it had been promiſed, would be unjuſt. A captive may lawfully recover his liberty, by a promiſe of neutrality; for his conqueror takes nothing by the promiſe, which he might not have ſecured by his death or confinement: and neutrality would be innocent in him, although criminal in another. It is manifeſt, however, that promiſes which come into the place of coercion, can extend no farther than to paſſive compliances; for coercion itſelf could compel no more. Upon the ſame principle, promiſes of ſecrecy ought not to be violated, although the public would derive advantage from the diſcovery. Such promiſes contain no unlawfulneſs in them, to deſtroy their obligation; for, as information would not have been imparted upon any other condition, the public loſe nothing by the promiſe, which they would have gained without it.

3. Promiſes are not binding, where they contradict a former promiſe.

Becauſe the performance is then unlawful, which reſolves this caſe into the laſt.

4. Promiſes are not binding before acceptance; that is, before notice given to the promiſee; for, where the promiſe is beneficial, if notice be given, acceptance may be preſumed. Until the promiſe be communicated to the promiſee, it is the ſame only as a reſolution in the mind of the promiſer, which may be altered at pleaſure. For no expectation has been excited, therefore none can be diſappointed.

But ſuppoſe I declare my intention to a third perſon, who, without any authority from me, conveys my declaration to the promiſee; is that ſuch a notice as will be binding upon me? It certainly is not: for I have not done that which conſtitutes the eſſence of a promiſe—I have not *voluntarily* excited expectation.

5. Promiſes are not binding which are releaſed by the promiſee.

This is evident; but it may be ſometimes doubted who is the promiſee. If I give a promiſe *to* A, of a place or vote for B; as to a father for his ſon; to an uncle for his nephew; to a friend of mine, for a relation or friend of his; then A is the promiſee, whoſe conſent I muſt obtain, to be releaſed from the engagement.

If I promiſe a place or vote to B *by* A, that is, if A be a meſſenger to convey the promiſe, as if I ſhould ſay, "you may tell B, that he ſhall have this place, or may depend upon my vote;" or if A be employed to introduce B's requeſt, and I anſwer in any terms which amount to a compliance with it; then B is the promiſee.

Promiſes to one perſon, for the benefit of another, are not releaſed by the death of the promiſee. For his death neither makes the performance impracticable, nor implies any conſent to releaſe the promiſer from it.

6. *Erroneous* promiſes are not binding in certain caſes; as,

Firſt, Where the error proceeds from the miſtake or miſrepreſentation of the promiſee.

Becauſe, a promiſer evidently ſuppoſes the truth of the account which the promiſee relates in order to obtain it. A beggar ſolicits your charity by a ſtory of the moſt pitiable diſtreſs—you promiſe to relieve him, if he will call again; in the interval you diſcover his ſtory to be made up of lies; this diſcovery, no doubt, releaſes you from your promiſe. One who wants your ſervice, deſcribes the buſineſs or office for which he would engage you; you promiſe to undertake it; when you come to enter upon it, you find the profits leſs, the labour more, or ſome material circumſtance different from the account he gave you—In ſuch caſe you are not bound by your promiſe.

Second, When the promiſe is underſtood by the promiſee to proceed upon a certain ſuppoſition, or when the promiſer apprehended he ſo underſtood it, and that ſuppoſition turns out to be falſe; then the promiſe is not binding.

This intricate rule will be beſt explained by an example. A father receives an account from abroad of the death of his only ſon—ſoon after which he promiſes his fortune to his nephew: The account turns out to be falſe—the father, we ſay, is releaſed from his promiſe; not merely becauſe he never would have made it, had he known the truth of the caſe—for that alone will not do—but becauſe the nephew alſo himſelf underſtood the promiſe to proceed upon the ſuppoſition of his couſin's death, or at leaſt his uncle thought he ſo underſtood it; and could not think otherwiſe. The promiſe proceeded upon this ſuppoſition in the promiſer's own apprehenſion, and as he believed, in the apprehenſion of both parties; and this belief of his is the preciſe circumſtance which ſets him free. The foundation of the rule is plainly this; a man is bound only to ſatisfy the expectation which he intended to excite; whatever condition, therefore, he intended to ſubject that expectation to, becomes an eſſential condition of the promiſe.

Errors, which come not within this deſcription, do not annul the obligation of a promiſe. I promiſe a candidate my vote; preſently another candidate appears, for whom I certainly would have reſerved it, had I been acquainted with his deſign. Here, therefore, as before, my promiſe proceeded from an error; and I never ſhould have given ſuch a promiſe, had I been aware of the truth of the caſe, as it has turned out; but the *promiſee* did not know this—*he* did not receive the promiſe ſubject to any ſuch condition, or as proceeding from any ſuch ſuppoſition; nor did I at the time imagine he ſo received it. This error, therefore, of mine, muſt fall upon my own head, and the promiſe be obſerved notwithſtanding. A father promiſes a certain fortune with his daughter, ſuppoſing himſelf to be worth ſo much; his circumſtances turn out, upon examination, worſe than he was aware of. Here again the promiſe was erroneous, but, for the reaſon aſſigned in the laſt caſe, will nevertheleſs be obligatory.

The caſe of erroneous promiſes is attended with ſome difficulty; for to allow every miſtake, or change of circumſtances to diſſolve the obligation of a promiſe, would be to allow a latitude, which might evacuate the force of almoſt all promiſes; and, on the other hand, to gird the obligation ſo tight, as to make no allowances for manifeſt and fundamental errors, would, in many inſtances, be productive of great hardſhip and abſurdity.

It has long been controverted amongſt moraliſts, whether promiſes be binding, which are extorted by violence or fear. The obligation of all promiſes reſults, we have ſeen, from the neceſſity or the uſe of that confidence which mankind repoſe in them. The queſtion, therefore, whether theſe promiſes are binding, will depend upon this, whether mankind, upon the whole, are benefited by the confidence placed in ſuch promiſes? A highwayman attacks you—and, being diſappointed of his booty, threatens or prepares to murder you; you promiſe, with many ſolemn aſſeverations, that, if he will ſpare your life, he ſhall find a purſe of money left for him at a place appointed. Upon the faith of this promiſe he forbears from farther violence. Now, your life was ſaved by the confidence repoſed in a promiſe extorted by fear; and the lives of many others may be ſaved by the ſame. This is a good conſequence. On the other hand, confidence in promiſes like theſe, greatly facilitates the perpetration of robberies. They may be made the inſtruments of almoſt unlimited extortion. This is a bad conſequence; and in the queſtion between the importance of theſe oppoſite conſequences reſides the doubt concerning the obligation of ſuch promiſes.

There are other caſes which are plainer; as where a magiſtrate confines a diſturber of the public peace in jail, till he promiſe to behave better; or a priſoner of war promiſes, if ſet at liberty, to return within a certain time. Theſe promiſes, ſay moraliſts, are binding, becauſe the violence or dureſs is juſt; but, the truth is, becauſe there is the ſame uſe of confidence in theſe promiſes, as of confidence in the promiſes of a perſon at perfect liberty.

Vows are promiſes to God. The obligation cannot be made out upon the ſame principle as that of other promiſes. The violation of them, nevertheleſs, implies a want of reverence to the Supreme Being; which is enough to make it ſinful.

There appears no command or encouragement in the Chriſtian ſcriptures to make vows; much leſs any authority to break through them, when they are made. The few inſtances* of vows which we read of in the New Teſtament, were religiouſly obſerved.

The rules we have laid down concerning promiſes are applicable to vows. Thus Jephthah's vow, taken in the ſenſe in which that tranſaction is commonly underſtood, was not binding; becauſe the performance, in that contingency, became unlawful.

Chapter VI.

CONTRACTS.

A CONTRACT is a mutual promiſe. The obligation, therefore, of contracts; the ſenſe in which they are to be interpreted; and the caſes where they are not binding, will be the ſame as of promiſes.

From the principle eſtabliſhed in the laſt Chapter, "that the obligation of promiſes is to be meaſured by the expectation, which the promiſer any how voluntarily and knowingly excites," reſults a rule, which governs the conſtruction of all contracts, and is capable, from its ſimplicity, of being applied with great eaſe and certainty, viz. That,

Whatever is expected by one ſide, and known to be ſo expected by the other, is to be deemed a part or condition of the contract.

The ſeveral kinds of contracts, and the order in which we propoſe to conſider them, may be exhibited at one view: thus,

Contracts of
- Sale.
- Hazard.
- Lending of
  - Inconſumable property.
  - Money.
- Labour.
  - Service.
  - Commiſſions.
  - Partnerſhip.
  - Offices.

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* Acts xviii. 18. xxi. 23.

Chapter VII.

CONTRACTS OF SALE.

THE rule of juſtice, which wants moſt to be inculcated in the making of bargains, is, that the ſeller is bound in conſcience to diſcloſe the faults of what he offers for ſale. Amongſt other methods of proving this, one may be the following:

I ſuppoſe it will be allowed, that to advance a direct falſehood in recommendation of our wares, by aſcribing to them ſome quality which we know that they have not, is diſhoneſt. Now compare with this the deſigned concealment of ſome fault, which we know that they have. The motives and the effects of actions are the only points of compariſon, in which their moral quality can differ; but the motives in theſe two caſes are the ſame, viz. to procure a higher price than we expect otherwiſe to obtain; the effect, that is, the prejudice to the buyer, is alſo the ſame; for he finds himſelf equally out of pocket by his bargain, whether the commodity, when he gets home with it, turn out worſe than he had ſuppoſed, by the want of ſome quality which he expected, or the diſcovery of ſome fault which he did not expect. If therefore actions be the ſame, as to all moral purpoſes, which proceed from the ſame motives, and produce the ſame effects; it is making a diſtinction without a difference, to eſteem it a cheat to magnify beyond the truth the virtues of what we ſell, but none to conceal its faults.

It adds to the value of this kind of honeſty, that the faults of many things are of a nature not to be known by any, but by the perſons who have uſed them: ſo that the buyer has no ſecurity from impoſition, but in the ingenuouſneſs and integrity of the ſeller.

There is one exception, however, to this rule, namely, where the ſilence of the ſeller implies ſome fault in the thing to be ſold, and where the buyer has a compenſation in the price for the riſk which he runs: as where a horſe, in a London repoſitory, is ſold by public auction, without warranty; the want of warranty is notice of ſome unſoundneſs, and produces a proportionable abatement in the price.

To this of concealing the faults of what we want to put off, may be referred the practice of paſſing bad money. This practice we ſometimes hear defended by a vulgar excuſe, that we have taken the money for good, and muſt therefore get rid of it. Which excuſe is much the ſame, as if one, who had been robbed upon the highway, ſhould allege he had a right to reimburſe himſelf out of the pocket of the firſt traveller he met; the juſtice of which reaſoning the traveller poſſibly may not comprehend.

Where there exiſts no monopoly or combination, the market price is always a fair price; becauſe it will always be proportionable to the uſe and ſcarcity of the article. Hence, there need be no ſcruple about demanding or taking the market price; and all thoſe expreſſions, "proviſions are extravagantly dear," "corn bears an unreaſonable price," and the like, import no unfairneſs or unreaſonableneſs in the ſeller.

If your tailor or your draper charge, or even aſk of you more for a ſuit of clothes, than the market price, you complain that you are impoſed upon; you pronounce the tradeſman who makes ſuch a charge diſhoneſt: although, as the man's goods were his own, and he had a right to preſcribe the terms, upon which he would conſent to part with them, it may be queſtioned what diſhoneſty there can be in the caſe, or wherein the impoſition conſiſts. Whoever opens a ſhop, or in any manner expoſes goods to public ſale, virtually engages to deal with his cuſtomers at a market price; becauſe it is upon the faith and opinion of ſuch an engagement, that any one comes within his ſhop doors, or offers to treat with him. This is expected by the buyer; is known to be ſo expected by the ſeller; which is enough, according to the rule delivered above, to make it a part of the contract between them, though not a ſyllable be ſaid about it. The breach of this implied contract conſtitutes the fraud inquired after.

Hence, if you diſclaim any ſuch engagement, you may ſet what value you pleaſe upon your property. If, upon being aſked to ſell a houſe, you anſwer that the houſe ſuits your fancy or conveniency, and that you will not turn yourſelf out of it under ſuch a price; the price fixed may be double of what the houſe coſt, or would fetch at public ſale, without any imputation of injuſtice or extortion upon you.

If the thing ſold be damaged, or periſh, between the ſale and the delivery, ought the buyer to bear the loſs, or the ſeller? This will depend upon the particular conſtruction of the contract. If the ſeller, either expreſsly, or by implication, or by cuſtom, engage to *deliver* the goods; as if I buy a ſet of china, and the china-man aſk me whether he ſhall bring or ſend them to me, and they be broken in the conveyance; the ſeller muſt abide by the loſs. If the thing ſold remain with the ſeller, at the inſtance, or for the conveniency of the buyer, then the buyer undertakes the riſk; as if I buy a horſe, and mention, that I will ſend for it on ſuch a day, which is in effect deſiring that it may continue with the ſeller till I do ſend for it; then whatever misfortune befals the horſe in the mean time, muſt be at my coſt.

And here, once for all, I would obſerve, that innumerable queſtions of this ſort are determined ſolely by *cuſtom*; not that cuſtom poſſeſſes any proper authority to alter or aſcertain the nature of right and wrong; but becauſe the contracting parties are preſumed to include in their ſtipulation, all the conditions which cuſtom has annexed to contracts of the ſame ſort; and when the uſage is notorious, and no exception made to it, this preſumption is generally agreeable to the fact.*

If I order a pipe of port from a wine merchant abroad; at what period the property paſſes from the merchant to me; whether upon the delivery of the wine at the merchant's warehouſe; upon its being put on ſhipboard at Oporto: upon the arrival of the ſhip in England; at its deſtined port; or not till the wine be committed to my ſervants, or depoſited in my cellar, are all queſtions, which admit of no deciſion, but what cuſtom points out. Whence, in juſtice, as well as law, what is called the *cuſtom of merchants*, regulates the conſtruction of mercantile concerns.

Chapter VIII.

CONTRACTS OF HAZARD.

By Contracts of Hazard, I mean gaming and inſurance.

What ſome ſay of this kind of contracts, that "one ſide ought not to have any advantage over the other," is neither practicable nor true. It is not practicable; for that perfect equality of ſkill and judgment, which this rule requires, is ſeldom to be met with. I might not have it in my power to play with fairneſs a game at cards, billiards, or tennis; lay a wager at a horſe race; or underwrite a policy of inſurance, once in a twelvemonth, if I muſt wait till I meet with a perſon, whoſe art, ſkill, and judgment in theſe matters, is neither greater nor leſs than my own. Nor is this equality requiſite to the juſtice of the contract. One party may give to the other the whole of the ſtake, if he pleaſe, and the other party may juſtly accept it if it be given him; much more therefore may one give to the other a part of the ſtake; or, what is exactly the ſame thing, an advantage in the chance of winning the whole.

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* It happens here, as in many caſes, that what the parties ought to do, and what a judge or arbitrator would award to be done, may be very different. What the parties ought to do, by virtue of their contract, depends upon their conſciouſneſs at the time of making it; whereas a third perſon finds it neceſſary to found his judgment upon preſumptions, which preſumptions may be falſe, although the moſt probable that he could proceed by.

The proper reſtriction is, that neither ſide have an advantage, by means of which the other is not aware: for this is an advantage taken, without being *given*. Although the event be ſtill an uncertainty, your advantage in the chance has a certain value; and ſo much of the ſtake, as that value amounts to, is taken from your adverſary without his knowledge, and therefore without his conſent. If I ſit down to a game at whiſt, and have an advantage over the adverſary, by means of a better memory, cloſer attention, or ſuperior knowledge of the rules and chances of the game, the advantage is fair; becauſe it is obtained by means of which the adverſary is aware; for he is aware, when he ſits down with me, that I ſhall exert the ſkill that I poſſeſs, to the utmoſt. But if I gain an advantage by packing the cards, glancing my eye into the adverſary's hands, or by concerted ſignals with my partner, it is a diſhoneſt advantage; becauſe it depends upon means, which the adverſary never ſuſpects that I make uſe of.

The ſame diſtinction holds of all contracts, into which chance enters. If I lay a wager at a horſe race, founded upon the conjecture I form from the appearance, and character, and breed of the horſe, I am juſtly entitled to any advantage which my judgment gives me; but, if I carry on a clandeſtine correſpondence with the jockies, and find out from them, that a trial has been actually made, or that it is ſettled beforehand which horſe ſhall win the race; all ſuch information is ſo much fraud, becauſe derived from ſources, which the other did not ſuſpect, when he propoſed or accepted the wager.

In ſpeculations in trade, or in the ſtocks, if I exerciſe my judgment upon the general aſpect and poſture of public affairs, and deal with a perſon who conducts himſelf by the ſame ſort of judgment; the contract has all the equality in it which is neceſſary; but if I have acceſs to ſecrets of ſtate at home, or private advice of ſome deciſive meaſure or event abroad, I cannot avail myſelf of theſe advantages with juſtice, becauſe they are excluded by the contract, which proceeded upon the ſuppoſition, that I had no ſuch advantage.

In inſurances, in which the underwriter computes his riſk entirely from the account given by the perſon inſured, it is abſolutely neceſſary to the juſtice and validity of the contract, that this account be exact and complete.

Chapter IX.

CONTRACTS OF LENDING OF INCONSUMABLE PROPERTY.

WHEN the identical loan is to be returned, as a book, a horſe, a harpſichord, it is called *inconſumable*, in oppoſition to corn, wine, money, and thoſe things which periſh, or are parted with in the uſe, and can therefore only be reſtored in kind.

The queſtions under this head are few and ſimple. The firſt is, if the thing lent be loſt or damaged, who ought to bear the loſs or damage? If it be damaged by the uſe, or by accident, in the uſe for which it was lent, the lender ought to bear it; as if I hire a job coach, the wear, tear, and ſoiling of the coach, muſt belong to the lender; or a horſe to go a particular journey, and in going the propoſed journey, the horſe die, or be lamed, the loſs muſt be the lender's: on the contrary, if the damage be occaſioned by the fault of the borrower, or by accident in ſome uſe for which it was not lent, then the borrower muſt make it good; as if the coach be overturned or broken to pieces by the careleſſneſs of your coachman; or the horſe be hired to take a morning's ride upon, and you go a hunting with him, or leap him over hedges, or put him in your cart, or carriage, and he be ſtrained, or ſtaked, or galled, or accidentally hurt, or drop down dead, whilſt you are thus uſing him; you muſt make ſatisfaction to the owner.

The two caſes are diſtinguiſhed by this circumſtance, that in one caſe, the owner foreſees the damage or riſk, and therefore conſents to undertake it; in the other caſe he does not.

It is poſſible that an eſtate or a houſe, may, during the term of a leaſe, be ſo increaſed or diminiſhed in its value, as to become worth much more, or much leſs, than the rent agreed to be paid for it. In ſome of which caſes, it may be doubted, to whom, of natural right, the advantage or diſadvantage belongs. The rule of juſtice ſeems to be this: if the alteration might be *expected* by the parties, the hirer muſt take the conſequence; if it could not, the owner. An orchard, or a vineyard, or a mine, or a fiſhery, or a decoy, may this year yield nothing, or next to nothing, yet the tenant ſhall pay his rent; and if the next year produce tenfold the uſual profit, no more ſhall be demanded; becauſe the produce is in its nature precarious, and this variation might be expected. If an eſtate in the fens of Lincolnſhire, or the iſle of Ely, be overflowed with water, ſo as to be incapable of occupation, the tenant, notwithſtanding, is bound by his leaſe; becauſe he entered into it with a knowledge and foreſight of this danger. On the other hand, if by the irruption of the ſea into a country where it was never known to have come before, by the change of the courſe of a river, the fall of a rock, the breaking out of a volcano, the burſting of a moſs, the incurſions of an enemy, or by a mortal contagion amongſt the cattle; if by means like theſe, an eſtate change, or loſe its value, the loſs ſhall fall upon the owner; that is, the tenant ſhall either be diſcharged from his agreement, or be entitled to an abatement of rent. A houſe in *London*, by the building of a bridge, the opening of a new road or ſtreet, may become of ten times its former value; and, by contrary cauſes, may be as much reduced in value: here alſo, as before, the owner, not the hirer, ſhall be affected by the alteration. The reaſon upon which our determination proceeds, is this; that changes ſuch as theſe being neither foreſeen nor provided for, by the contracting parties, form no part or condition of the contract; and therefore ought to have the ſame effect as if no contract at all had been made (for none was made with reſpect to *them*) that is, ought to fall upon the owner.

Chapter X.

CONTRACTS CONCERNING THE LENDING OF MONEY.

THERE exiſts no reaſon in the law of nature, why a man ſhould not be paid for the lending of his money, as well as of any other property into which the money might be converted.

The ſcruples that have been entertained upon this head, and upon the foundation of which, the receiving of intereſt or uſury (for they formerly meant the ſame thing) was once prohibited in almoſt all Chriſtian countries,[*] aroſe from a paſſage in the law of Moses, *Deuteronomy*, xxiii. 19, 20. "Thou ſhalt not lend upon uſury to thy brother; uſury of money, uſury of victuals, uſury of any thing that is lent upon uſury: unto a ſtranger thou mayeſt lend upon uſury, but unto thy brother thou ſhalt not lend upon uſury."

This prohibition is now generally underſtood to have been intended for the Jews alone, as part of the civil or political law of that nation, and calculated to preſerve amongſt themſelves that diſtribution of property, to which many of their inſtitutions were ſubſervient; as the marriage of an heireſs with her own tribe; of a widow, who was left childleſs, to her huſband's brother; the year of jubilee, when alienated eſtates reverted to the family of the original proprietor—regulations, which were never thought to be binding upon any but the commonwealth of Iſrael.

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[*] By a ſtatute of James the Firſt, intereſt above eight pounds per cent. was prohibited (and conſequently under that rate allowed) with this ſage proviſion: *That this ſtatute ſhall not be conſtrued or expounded to allow the practice of uſury in point of religion or conſcience.*

This interpretation is confirmed, I think, beyond all controverſy, by the diſtinction made in the law, between a Jew and a foreigner, "unto a ſtranger thou mayeſt lend upon uſury, but unto thy brother thou mayeſt not lend upon uſury;" a diſtinction which could hardly have been admitted into a law which the divine Author intended to be of moral and of univerſal obligation.

The rate of intereſt has in moſt countries been regulated by law. The Roman law allowed of twelve pounds per cent. which *Juſtinian* reduced at one ſtroke to four pounds. A ſtatute of the thirteenth year of Queen *Elizabeth*, which was the firſt that tolerated the receiving of intereſt in England at all, reſtrained it to ten pounds per cent.; a ſtatute of *James* the Firſt, to eight pounds; of *Charles* the Second, to ſix pounds; of Queen *Anne*, to five pounds, on pain of forfeiture of treble the value of the money lent; at which rate and penalty the matter now ſtands. The policy of theſe regulations is, to check the power of accumulating wealth without induſtry; to give encouragement to trade, by enabling adventurers in it to borrow money at a moderate price; and, of late years, to enable the ſtate to borrow the ſubjects' money itſelf.

Compound intereſt, though forbidden by the law of England, is agreeable enough to natural equity; for intereſt detained after it is due, becomes, to all intents and purpoſes, part of the ſum lent.

It is a queſtion which ſometimes occurs, how money borrowed in one country ought to be paid in another, where the relative value of the precious metals is not the ſame. For example, ſuppoſe I borrow a hundred guineas in London, where each guinea is worth one and twenty ſhillings, and meet my creditor in the Eaſt Indies, where a guinea is worth no more perhaps than nineteen, is it a ſatisfaction of the debt to return a hundred guineas; or muſt I make up ſo many times one and twenty ſhillings? I ſhould think the latter: for it muſt be preſumed, that my creditor, had he not lent me his guineas, would have diſpoſed of them, in ſuch a manner, as to have now had, in the place of them, ſo many one and twenty ſhillings; and the queſtion ſuppoſes, that he neither intended, nor ought to be a ſufferer, by parting with the poſſeſſion of his money to me.

When the relative value of coin is altered by an act of the ſtate, if the alteration would have extended to the identical pieces which were lent, it is enough to return an equal number of pieces of the ſame denomination, or their preſent value in any other. As if guineas were reduced by an act of parliament to twenty ſhillings, ſo many twenty ſhillings as I borrowed guineas, would be a juſt repayment. It would be otherwiſe, if the reduction was owing to a debaſement of the coin; for then reſpect ought to be had to the comparative value of the old guinea and the new.

Whoever borrows money is bound in conſcience to repay it. This every man can ſee: but every man cannot ſee, or does not, however, reflect, that he is, in conſequence, alſo bound to uſe the means neceſſary to enable himſelf to repay it. "If he pay the money when he has it, or has it to ſpare, he does all that an honeſt man can do," and all, he imagines, that is required of him; whilſt the previous meaſures, which are neceſſary to furniſh him with that money, he makes no part of his care, nor obſerves to be as much his duty as the other; ſuch as ſelling a family ſeat, or a family eſtate, contracting his plan of expenſe, laying down his equipage, reducing the number of his ſervants, or any of thoſe humiliating ſacrifices, which juſtice requires of a man in debt, the moment he perceives that he has no reaſonable proſpect of paying his debts without them. An expectation, which depends upon the continuance of his own life, will not ſatisfy an honeſt man, if a better proviſion be in his power: for it is a breach of faith to ſubject a creditor, when we can help it, to the riſk of our life, be the event what it will; that not being the ſecurity to which credit was given.

I know few ſubjects which have been more miſunderſtood than the law which authorizes the impriſonment of inſolvent debtors. It has been repreſented as a gratuitous cruelty, which contributed nothing to the reparation of the creditor's loſs, or to the advantage of the community. This prejudice ariſes principally from conſidering the ſending of a debtor to jail, as an act of private ſatisfaction to the creditor, inſtead of a public puniſhment. As an act of ſatisfaction or revenge, it is always wrong in the motive, and often intemperate and undiſtinguiſhing in the exerciſe. Conſider it as a public puniſhment, founded upon the ſame reaſon, and ſubject to the ſame rules, as other puniſhments; and the juſtice of it, together with the degree to which it ſhould be extended, and the objects upon whom it may be inflicted, will be apparent. There are frauds relating to inſolvency, againſt which it is as neceſſary to provide puniſhment, as for any public crimes whatever; as where a man gets your money into his poſſeſſion, and forthwith runs away with it; or what is little better, ſquanders it in vicious expenſes; or ſtakes it at the gaming table; in the alley; or upon wild adventures in trade; or is conſcious at the time he borrows it, that he can never repay it; or wilfully puts it out of his power by profuſe living; or conceals his effects, or transfers them by colluſion to another; not to mention the obſtinacy of ſome debtors, who had rather rot in jail, than deliver up their eſtates; for, to ſay the truth, the firſt abſurdity is in the law itſelf, which leaves it in a debtor's power to withhold any part of his property from the claim of his creditors. The only queſtion is, whether the puniſhment be properly placed in the hands of an exaſperated creditor; for which it may be ſaid, that theſe frauds are ſo ſubtile and verſatile, that nothing but a diſcretionary power can overtake them; and that no diſcretion is likely to be ſo well informed, ſo vigilant, or ſo active, as that of the creditor.

It muſt be remembered, however, that the confinement of a debtor in jail is a puniſhment; and that every puniſhment ſuppoſes a crime. To purſue, therefore, with the extremity of legal rigour, a ſufferer, whom the fraud or failure of others, his own want of capacity, or the diſappointments and miſcarriages to which all human affairs are ſubject, have reduced to ruin, merely becauſe we are provoked by our loſs, and ſeek to relieve the pain we feel by that which we inflict, is repugnant not only to humanity, but to juſtice; for it is to pervert a proviſion of law, deſigned for a different and a ſalutary purpoſe, to the gratification of private ſpleen and reſentment. Any alteration in theſe laws, which could diſtinguiſh the degrees of guilt, or convert the ſervice of the inſolvent debtors to ſome public profit, might be an improvement; but any conſiderable mitigation of their rigour, under colour of relieving the poor, would increaſe their hardſhips. For whatever deprives the creditor of his power of coercion, deprives him of his ſecurity; and as this muſt add greatly to the difficulty of obtaining credit, the poor, eſpecially the lower ſort of tradeſmen, are the firſt who would ſuffer by ſuch a regulation. As tradeſmen muſt buy *before* they ſell, you would exclude from trade two thirds of thoſe who now carry it on, if none were enabled to enter into it without a capital ſufficient for prompt payment. An advocate, therefore, for the intereſts of this important claſs of the community, will deem it more eligible, that one out of a thouſand ſhould be ſent to jail by his creditors, than that the nine hundred and ninety-nine ſhould be ſtraitened, and embarraſſed, and many of them lie idle, by the want of credit.

Chapter XI.

CONTRACTS OF LABOUR.

SERVICE.

SERVICE in this country is, as it ought to be, voluntary, and by contract; and the maſter's authority extends no farther than the terms or equitable conſtruction of the contract will juſtify.

The treatment of ſervants, as to diet, diſcipline, and accommodation, the kind and quantity of work to be required of them, the intermiſſion, liberty, and indulgence to be allowed them, muſt be determined in a great meaſure by cuſtom; for where the contract involves ſo many particulars, the contracting parties expreſs a few perhaps of the principal, and by mutual underſtanding refer the reſt to the known cuſtom of the country in like caſes.

A ſervant is not bound to obey the *unlawful* commands of his maſter; to miniſter, for inſtance, to his unlawful pleaſures; or to aſſiſt him by unlawful practices in his profeſſion; as in ſmuggling or adulterating the articles in which he deals. For the ſervant is bound by nothing but his own promiſe; and the obligation of a promiſe extends not to things unlawful.

For the ſame reaſon, the maſter's authority is no *juſtification* of the ſervant in doing wrong; for the ſervant's own promiſe, upon which that authority is founded, would be none.

Clerks and apprentices ought to be employed entirely in the profeſſion or trade which they are intended to learn. Inſtruction is their hire, and to deprive them of the opportunities of inſtruction, by taking up their time with occupations foreign to their buſineſs, is to defraud them of their wages.

The maſter is reſponſible for what a ſervant does in the ordinary courſe of his employment; for it is done under a general authority committed to him, which is in juſtice equivalent to a ſpecific direction. Thus, if I pay money to a banker's clerk, the banker is accountable; but not if I had paid it to his butler or his footman, whoſe buſineſs it is not to receive money. Upon the ſame principle, if I once ſend a ſervant to take up goods upon credit, whatever goods he afterwards takes up at the ſame ſhop, ſo long as he continues in my ſervice, are juſtly chargeable to my account.

The law of this country goes great lengths in intending a kind of concurrence in the maſter, ſo as to charge him with the conſequences of his ſervant's conduct. If an inn-keeper's ſervant rob his gueſts, the inn-keeper muſt make reſtitution; if a farrier's ſervant lame a horſe, the farrier muſt anſwer for the damage; and, ſtill farther, if your coachman or carter drive over a paſſenger, in the road, the paſſenger may recover from you a ſatisfaction for the hurt he ſuffers. But theſe determinations ſtand, I think, rather upon the authority of the law, than any principle of natural juſtice.

There is a careleſſneſs and facility in "giving characters," as it is called, of ſervants, eſpecially when given in writing, or according to ſome eſtabliſhed form, which, to ſpeak plainly of it, is a cheat upon thoſe who accept them. They are given with ſo little reſerve and veracity, "that I ſhould as ſoon depend," ſays the author of the Rambler, "upon an acquittal at the Old Bailey, by way of recommendation of a ſervant's honeſty, as upon one of theſe characters." It is ſometimes careleſſneſs; and ſometimes alſo to get rid of a bad ſervant without the uneaſineſs of a diſpute; for which nothing can be pleaded, but the moſt ungenerous of all excuſes, that the perſon whom we deceive is a ſtranger.

There is a conduct, the reverſe of this, but more injurious, becauſe the injury falls where there is no remedy. I mean the obſtructing a ſervant's advancement, becauſe you are unwilling to ſpare his ſervice. To ſtand in the way of your ſervant's intereſt, is a poor return for his fidelity; and affords ſlender encouragement for good behaviour, in this numerous and therefore important part of the community. It is a piece of injuſtice, which, if practiſed towards an equal, the law of honour would lay hold of; as it is, it is neither uncommon nor diſreputable.

A maſter of a family is culpable, if he permit any vices among his domeſtics, which he might reſtrain by due diſcipline and a proper interference. This reſults from the general obligation to prevent miſery when in our power; and the aſſurance which we have, that vice and miſery at the long run go together. Care to maintain in his family a ſenſe of virtue and religion, received the divine approbation in the perſon of ABRAHAM, *Gen.* xviii. 19—"I know him, that he will command his children, and *his houſehold* after him; and they ſhall keep the way of the Lord, to do juſtice and judgment." And indeed no authority ſeems ſo well adapted to this purpoſe, as that of maſters of families: becauſe none operates upon the ſubjects of it, with an influence ſo immediate and conſtant.

What the Chriſtian ſcriptures have delivered concerning the relation and reciprocal duties of maſters and ſervants, breathes a ſpirit of liberality, very little known in ages when ſervitude was ſlavery; and which flowed from a habit of contemplating mankind under the common relation in which they ſtand to their Creator, and with reſpect to their intereſt in another exiſtence.* "Servants, be obedient to them that are your maſters according to the fleſh; with fear and trembling, in ſingleneſs of your heart, as unto Chriſt; not with eye-ſervice, as men pleaſers; but as the ſervants of Chriſt, doing the will of God from the heart; *with good will doing ſervice, as to the Lord, and not to men:* knowing that whatſoever good thing any man doth, the ſame ſhall he receive of the Lord, whether he be bond or free. And, ye maſters, do the ſame thing unto them, forbearing threatening; knowing that your Maſter alſo is in heaven; neither is there reſpect of perſons with him." The idea of referring their ſervice to God, of conſidering *him* as having appointed them their taſk, that they were doing *his* will, and were to look to *him* for their reward, was new; and affords a greater ſecurity to the maſter than any inferior principle, becauſe it tends to produce a ſteady and cordial obedience in the place of that conſtrained ſervice, which can never be truſted out of ſight, and which is juſtly enough called eye-ſervice. The exhortation to maſters, to keep in view their own ſubjection and accountableneſs, was no leſs ſeaſonable.

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* Eph. vi. 5—9.

Chapter XII.

CONTRACTS OF LABOUR.

COMMISSIONS.

WHOEVER undertakes another man's buſineſs, makes it his own, that is, promiſes to employ upon it the ſame care, attention and diligence, that he would do if it were actually his own; for he knows that the buſineſs was committed to him with that expectation. And he promiſes nothing more than this. Therefore an agent is not obliged to wait, inquire, ſolicit, ride about the country, toil, or ſtudy, whilſt there remains a poſſibility of benefiting his employer. If he exert ſo much of his activity, and uſe ſuch caution, as the value of the buſineſs in his judgment deſerves, that is, as he would have thought ſufficient, if the ſame intereſt of his own had been at ſtake, he has diſcharged his duty, although it ſhould afterwards turn out, that by more activity, and longer perſeverance, he might have concluded the buſineſs with greater advantage.

This rule defines the duty of factors, ſtewards, attorneys, and advocates.

One of the chief difficulties of an agent's ſituation is, to know how far he may depart from his inſtructions, when, from ſome change or diſcovery in the circumſtances of his commiſſion, he ſees reaſon to believe that his employer, if he were preſent, would alter his intention. The latitude allowed to agents in this reſpect will be different, according as the commiſſion was confidential or miniſterial; and according as the general rule and nature of the ſervice require a prompt and preciſe obedience to orders, or not. An attorney ſent to treat for an eſtate, if he found out a flaw in the title, would deſiſt from propoſing the price he was directed to propoſe; and very properly. On the other hand, if the commander in chief of an army detach an officer under him upon a particular ſervice, which ſervice turns out more difficult, or leſs expedient, than was ſuppoſed, in ſo much that the officer is convinced that his commander, if he were acquainted with the true ſtate in which the affair is found, would recal his orders, yet muſt this officer, if he cannot wait for freſh directions, without prejudice to the expedition he is ſent upon, purſue, at all hazards, thoſe which he brought out with him.

What is truſted to an agent may be loſt or damaged in his hands by *misfortune*. An agent who acts without pay is clearly not anſwerable for the loſs; for, if he gave his labour for nothing, it cannot be preſumed, that he gave alſo ſecurity for the ſucceſs of it. If the agent be hired to the buſineſs, the queſtion will depend upon the apprehenſion of the parties at the time of making the contract; which apprehenſion of theirs muſt be collected chiefly from cuſtom, by which probably it was guided. Whether a public carrier ought to account for goods ſent by him; the owner or maſter of a ſhip for the cargo; the poſt office for letters, or bills incloſed in letters, where the loſs is not imputed to any fault or neglect of theirs; are queſtions of this ſort. Any expreſſion, which by implication amounts to a promiſe, will be binding upon the agent without cuſtom; as where the proprietors of a ſtage-coach advertiſe, that they will *not* be accountable for money, plate, or jewels, this makes them accountable for every thing elſe; or where the price is too much for the labour, part of it may be conſidered as a premium for inſurance. On the other hand, any caution on the part of the owner to guard againſt danger, is evidence that he conſiders the riſk to be his; as cutting a bank bill in two, to ſend by the poſt at different times.

Univerſally, unleſs a *promiſe*, either expreſs or tacit, can be proved againſt the agent, the loſs muſt fall upon the owner.

The agent may be a ſufferer in his own perſon or property by the buſineſs which he undertakes; as where one goes a journey for another, and lames his horſe, or is hurt himſelf by a fall upon the road; can the agent in ſuch caſe claim a compenſation for the misfortune? Unleſs the ſame be provided for by expreſs ſtipulation, the agent is not entitled to any compenſation from his employer on that account: for where the danger is not foreſeen, there can be no reaſon to believe, that the employer engaged to indemnify the agent againſt it; ſtill leſs where it is foreſeen: for whoever knowingly undertakes a dangerous employment, in common conſtruction takes upon himſelf the danger and the conſequences; as where a fireman undertakes for a reward to riſk a box of writings from the flames; or a ſailor to bring off a paſſenger from a ſhip in a ſtorm.

Chapter XIII.

CONTRACTS OF LABOUR.

PARTNERSHIP.

I KNOW nothing upon the ſubject of partnerſhip that requires explanation, but in what manner the profits are to be divided, where one partner contributes money and the other labour; which is a common caſe.

Rule. From the ſtock of the partnerſhip deduct the ſum advanced, and divide the remainder between the monied partner, and the labouring partner, in the proportion of the intereſt of the money to the wages of the labour, allowing ſuch a rate of intereſt as money might be borrowed for upon the ſame ſecurity, and ſuch wages as a journeyman would require for the ſame labour and truſt.

Example. A advances a thouſand pounds, but knows nothing of the buſineſs; B produces no money, but has been brought up to the buſineſs and undertakes to conduct it. At the end of the year the ſtock and the effects of the partnerſhip amount to twelve hundred pounds; conſequently there are two hundred pounds to be divided. Now nobody would lend money upon the event of the buſineſs ſucceeding, which is A's ſecurity, under ſix per cent.—therefore A muſt be allowed ſixty pounds for the intereſt of his money. B, before he engaged in the partnerſhip, earned thirty pounds a year in the ſame employment; his labour, therefore, ought to be valued at thirty pounds; and the two hundred pounds muſt be divided between the partners, in the proportion of ſixty to thirty; that is, A muſt receive one hundred and thirty-three pounds ſix ſhillings and eight pence, and B ſixty-ſix pounds thirteen ſhillings and four pence.

If there be nothing gained, A loſes his intereſt, and B his labour, which is right. If the original ſtock be diminiſhed, by this rule B loſes only his labour as before; whereas A loſes his intereſt, and part of the principal: for which eventual diſadvantage A is compenſated, by having the intereſt of his money computed at ſix per cent. in the diviſion of the profits, when there are any.

It is true, that the diviſion of the profit is ſeldom forgotten in the conſtitution of the partnerſhip; and is therefore commonly ſettled by expreſs agreements; but theſe agreements, to be equitable, ſhould purſue the principle of the rule here laid down.

All the partners are bound by what any one of them does in the courſe of the buſineſs; for, *quoad hoc*, each partner is conſidered as an authorized agent for the reſt.

Chapter XIV.

CONTRACTS OF LABOUR.

OFFICES.

IN many offices, as ſchools, fellowſhips of colleges, profeſſorſhips of the univerſities, and the like, there is a twofold contract, one with the founder, the other with the electors.

The contract with the founder obliges the incumbent of the office to diſcharge every duty appointed by the charter, ſtatutes, deed of gift, or will of the founder; becauſe the endowment was given, and conſequently accepted for that purpoſe, and upon thoſe conditions.

The contract with the electors extends this obligation to all duties that have been *cuſtomarily* connected with and reckoned a part of the office, though not preſcribed by the founder: for the electors expect from the perſon they chooſe, all the duties which his predeceſſors have diſcharged; and as the perſon elected cannot be ignorant of their expectation, if he meant to have refuſed this condition, he ought to have apprized them of his objection.

And here let it be obſerved, that the electors can excuſe the conſcience of the perſon elected from this laſt claſs of duties alone; becauſe this claſs reſults from a contract, to which the electors and the perſon elected are the only parties. The other claſs of duties reſults from a different contract.

It is a queſtion of ſome magnitude and difficulty, what offices may be conſcientiouſly ſupplied by a deputy.

We will ſtate the ſeveral objections to the ſubſtitution of a deputy; and then it will be underſtood that a deputy may be allowed in all caſes, to which theſe objections do not apply.

An office may not be diſcharged by deputy,

1. Where a particular confidence is repoſed in the judgment and conduct of the perſon appointed to it; as the office of a ſteward, guardian, judge, commander in chief by land or ſea.

2. Where the cuſtom hinders; as in the caſe of ſchoolmaſters, tutors, and of commiſſions in the army or navy.

3. Where the duty cannot, from its nature, be ſo well performed by a deputy; as the deputy governor of a province may not poſſeſs the legal authority, or the actual influence of his principal.

4. When ſome inconveniency would reſult to the ſervice in general from the permiſſion of deputies in ſuch caſes: for example, it is probable that military merit would be much diſcouraged, if the duties belonging to commiſſions in the army were generally allowed to be executed by ſubſtitutes.

The non-reſidence of the parochial clergy, who ſupply the duty of their benefices by curates, is worthy of a more diſtinct conſideration. And, in order to draw the queſtion upon this caſe to a point, we will ſuppoſe the officiating curate to diſcharge every duty, which his principal, were he preſent, would be bound to diſcharge, and in a manner equally beneficial to the pariſh; under which circumſtances, the only objection to the abſence of the principal, at leaſt the only one of the foregoing objections, is the laſt.

And, in my judgment, the force of this objection will be much diminiſhed, if the abſent rector or vicar be, in the mean time, engaged in any function or employment, of equal or of greater importance to the general intereſt of religion. For the whole revenue of the national church may properly enough be conſidered as a common fund for the ſupport of the national religion; and if a clergyman be ſerving the cauſe of Chriſtianity and proteſtantiſm, it can make little difference, out of what particular portion of this fund, that is, by the tithes and glebe of what particular pariſh his ſervice be requited; any more than it can prejudice the king's ſervice, that an officer who has ſignalized his merit in America, ſhould be rewarded with the government of a fort or a caſtle in Ireland, which he never ſaw; but for the cuſtody of which proper proviſion is made, and care taken.

Upon the principle thus explained, this indulgence is due to none more than to thoſe who are occupied in cultivating, or communicating religious knowledge, or the ſciences ſubſidary to religion.

This way of conſidering the revenues of the church, as a common fund for the ſame purpoſe, is the more equitable, as the value of particular preferments bears no proportion to the particular charge or labour.

But when a man draws upon this fund, whoſe ſtudies and employments bear no relation to the object of it; and who is no farther a miniſter of the Chriſtian religion, than as a cockade makes a ſoldier, it ſeems a miſapplication little better than a robbery.

And to thoſe who have the management of ſuch matters, I ſubmit this queſtion, whether the impoveriſhment of the fund, by converting the beſt ſhare of it into *annuities* for the gay and illiterate youth of great families, threatens not to ſtarve and ſtifle the little clerical merit that is left amongſt us?

All legal diſpenſations from reſidence proceed upon the ſuppoſition, that the abſentee is detained from his living, by ſome engagement of equal or of greater public importance. Therefore, if in a caſe, where no ſuch reaſon can with truth be pleaded, it be ſaid, that this queſtion regards a right of property, and that all right of property awaits the diſpoſition of law; that, therefore, if the law, which gives a man the emoluments of a living, excuſe him from reſiding upon it, he is excuſed in conſcience; we anſwer, that the law does not excuſe him *by intention*, and that all other excuſes are fraudulent.

Chapter XV.

LIES.

A LIE is a breach of promiſe; for whoever ſeriouſly addreſſes his diſcourſe to another, tacitly promiſes to ſpeak the truth, becauſe he knows that the truth is expected.

Or the obligation of veracity may be made out from the direct ill conſequences of lying to ſocial happineſs. Which conſequences conſiſt, either in ſome ſpecific injury to particular individuals, or in the deſtruction of that confidence, which is eſſential to the intercourſe of human life: for which latter reaſon, a lie may be pernicious in its general tendency, and therefore criminal, though it produce no particular or viſible miſchief to any one.

There are falſehoods which are not lies; that is, which are not criminal; as,

1. Where no one is deceived; which is the caſe in parables, fables, novels, jeſts, tales to create mirth, ludicrous embelliſhments of a ſtory, where the declared deſign of the ſpeaker is not to inform, but to divert; compliments in the ſubſcription of a letter, a ſervant's *denying* his maſter, a priſoner's pleading not guilty, an advocate aſſerting the juſtice, or his belief of the juſtice of his client's cauſe. In ſuch inſtances, no confidence is deſtroyed, becauſe none was repoſed; no promiſe to ſpeak the truth is violated, becauſe none was given, or underſtood to be given.

2. Where the perſon to whom you ſpeak has no right to know the truth, or more properly, where little or no inconveniency reſults from the want of confidence in ſuch caſes; as where you tell a falſehood to a madman, for his own advantage; to a robber, to conceal your property; to an aſſaſſin, to defeat, or to divert him from, his purpoſe. The particular conſequence is by the ſuppoſition beneficial; and as to the general conſequence, the worſt that can happen is, that the madman, the robber, the aſſaſſin, will not truſt you again; which (beſide that the firſt is incapable of deducing regular concluſions from having been once deceived, and the two laſt not likely to come a ſecond time in your way) is ſufficiently compenſated by the immediate benefit which you propoſe by the falſehood.

It is upon this principle, that, by the laws of war, it is allowed to deceive an enemy by feints, falſe colours,* ſpies, falſe intelligence, and the like; but, by no means, in treaties, truces, ſignals of capitulation, or ſurrender; and the difference is, that the former ſuppoſe hoſtilities to continue, the latter are calculated to terminate or ſuſpend them. In the *conduct* of war, and whilſt the war continues, there is no uſe, or rather no place for confidence, betwixt the contending parties; but in whatever relates to the *termination* of war, the moſt religious fidelity is expected, becauſe without it wars could not ceaſe, nor the victors be ſecure, but by the entire deſtruction of the vanquiſhed.

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* There have been two or three inſtances of late, of Engliſh ſhips decoying an enemy into their power, by counterfeiting ſignals of diſtreſs; an artifice which ought to be reprobated by the common indignation of mankind: for a few examples of captures effected by this ſtratagem, would put an end to that promptitude in affording aſſiſtance to ſhips in diſtreſs, which is the beſt virtue in a ſea-faring character, and by which the perils of navigation are diminiſhed to all. A. D. 1775.

Many people indulge in ſerious diſcourſe a habit of fiction and exaggeration, in the accounts they give of themſelves, of their acquaintance, or of the extraordinary things which they have ſeen or heard; and ſo long as the facts they relate are indifferent, and their narratives, though falſe, are inoffenſive, it may ſeem a ſuperſtitious regard to truth, to cenſure them merely for truth's ſake.

In the firſt place, it is almoſt impoſſible to pronounce beforehand, with certainty, concerning any lie, that it is inoffenſive. *Volat irrevocabile;* and collects ſometimes accretions in its flight, which entirely change its nature. It may owe poſſibly its miſchief to the officiouſneſs or miſrepreſentation of thoſe who circulate it; but the miſchief is, nevertheleſs, in ſome degree, chargeable upon the original editor.

In the next place, this liberty in converſation defeats its own end. Much of the pleaſure, and all the benefit of converſation, depends upon our opinion of the ſpeaker's veracity; for which this rule leaves no foundation. The faith indeed of a hearer muſt be extremely perplexed, who conſiders the ſpeaker, or believes that the ſpeaker conſiders himſelf, as under no obligation to adhere to truth, but according to the particular importance of what he relates.

But beſide and above both theſe reaſons, *white* lies always introduce others of a darker complexion. I have ſeldom known any one who deſerted truth in trifles, that could be truſted in matters of importance.

Nice diſtinctions are out of the queſtion, upon occaſions, which, like thoſe of ſpeech, return every hour. The habit, therefore, of lying, when once formed, is eaſily extended to ſerve the deſigns of malice or intereſt; like all habits, it ſpreads indeed of itſelf.

Pious frauds, as they are improperly enough called, pretended inſpirations, forged books, counterfeit miracles, are impoſitions of a more ſerious nature. It is poſſible that they may ſometimes, though ſeldom, have been ſet up and encouraged, with a deſign to do good; but the good they aim at, requires that the belief of them ſhould be perpetual, which is hardly poſſible; and the detection of the fraud is ſure to diſparage the credit of all pretenſions of the ſame nature. Chriſtianity has ſuffered more injury from this cauſe, than from all other cauſes put together.

As there may be falſehoods which are not lies, ſo there may be lies without literal or direct falſehood. An opening is always left for this ſpecies of prevarication, when the literal and grammatical ſignification of a ſentence is different from the popular and cuſtomary meaning. It is the wilful deceit that makes the lie; and we wilfully deceive, when our expreſſions are not true in the ſenſe in which we believe the hearer to apprehend them. Beſides, it is abſurd to contend for any ſenſe of words, in oppoſition to uſage, for all ſenſes of all words are founded upon uſage, and upon nothing elſe.

Or a man may *act* a lie; as by pointing his finger in a wrong direction, when a traveller inquires of him his road; or when a tradeſman ſhuts up his windows, to induce his creditors to believe that he is abroad: for to all moral purpoſes, and therefore as to veracity, ſpeech and action are the ſame; ſpeech being only a mode of action.

Or, laſtly, there may be lies of *omiſſion*. A writer of Engliſh hiſtory, who, in his account of the reign of CHARLES the Firſt, ſhould wilfully ſuppreſs any evidence of that prince's deſpotic meaſures and deſigns, might be ſaid to lie; for, by entitling his book a *Hiſtory of England*, he engages to relate the whole truth of the hiſtory, or, at leaſt, all that he knows of it.

Chapter XVI.

OATHS.

I. *FORMS of Oaths.*
II. *Signification.*
III. *Lawfulneſs.*
IV. *Obligation.*
V. *What Oaths do not bind.*
VI. *In what ſenſe Oaths are to be interpreted.*

I. The forms of oaths, like other religious ceremonies, have in all ages been various; but conſiſting, for the moſt part, of ſome bodily action,* and of a preſcribed form of words. Amongſt the *Jews*, the juror held up his right-hand towards heaven, which explains a paſſage in the cxlivth Pſalm—"whoſe mouth ſpeaketh vanity, and *their right-hand is a right-hand of falſehood.*" The ſame form is retained in *Scotland* ſtill. Amongſt the ſame Jews, an oath of fidelity was taken, by the ſervant's putting his hand under the thigh of his lord, as *Eliezer* did to *Abraham*, *Gen.* xxiv. 2. from whence, with no great variation, is derived perhaps the form of doing homage at this day, by putting the hands between the knees, and within the hands of the liege.

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* It is commonly thought that oaths are denominated *corporal* oaths, from the bodily action which accompanies them, of laying the right-hand upon a book, containing the four Goſpels. This opinion, however, appears to be a miſtake; for the term is borrowed from the ancient uſage of touching, upon theſe occaſions, the *corporale*, or cloth which covered the conſecrated elements.

Amongſt the *Greeks* and *Romans*, the form varied with the ſubject and occaſion of the oath. In private contracts, the parties took hold of each other's hand, whilſt they ſwore to the performance; or they touched the altar of the god, by whoſe divinity they ſwore. Upon more ſolemn occaſions it was the cuſtom to ſlay a victim; and the beaſt being *ſtruck down*, with certain ceremonies and invocations, gave birth to the expreſſions τεμνειν ορκον, *ferire pactum;* and to our *Engliſh* phraſe, tranſlated from theſe, of "ſtriking a bargain."

The forms of oaths in Chriſtian countries are alſo very different; but in no country in the world, I believe, worſe contrived, either to convey the meaning, or impreſs the obligation of an oath, than in our own. The juror with us, after repeating the promiſe or affirmation, which the oath is intended to confirm, adds, "ſo help me God;" or more frequently the ſubſtance of the oath is repeated to the juror, by the officer or magiſtrate who adminiſters it, adding in the concluſion, "ſo help you God." The energy of the ſentence reſides in the particle *ſo*; *ſo*, that is, *hâc lege*, upon condition of my ſpeaking the truth, or, performing this promiſe, and not otherwiſe, may God help me. The juror, whilſt he hears or repeats the words of the oath, holds his right-hand upon a Bible, or other book, containing the four Goſpels. The concluſion of the oath ſometimes runs, "ita me Deus adjuvet, et hæc ſancta evangelia," or "ſo help me God, and the contents of this book;" which laſt clauſe forms a connexion between the words and action of the juror, that before was wanting. The juror then kiſſes the book: the kiſs, however, ſeems rather an act of reverence to the contents of the book, as, in the popiſh ritual, the prieſt kiſſes the Goſpel before he reads it, than any part of the oath.

This obſcure and elliptical form, together with the levity and frequency with which it is adminiſtered, has brought about a general inadvertency to the obligation of oaths, which, both in a religious and political view, is much to be lamented; and it merits public conſideration, whether the requiring of oaths on ſo many frivolous occaſions, eſpecially in the cuſtoms, and in the qualification for petty offices, has any other effect, than to make them cheap in the minds of the people. A pound of tea cannot travel regularly from the ſhip to the conſumer, without coſting half a dozen oaths at the leaſt; and the ſame ſecurity for the due diſcharge of their office, namely, that of an oath, is required from a church-warden and an archbiſhop, from a petty conſtable and the chief juſtice of England. Let the law continue its own ſanctions, if they be thought requiſite; but let it ſpare the ſolemnity of an oath. And where, from the want of ſomething better to depend upon, it is neceſſary to accept men's own word or own account, let it annex to prevarication penalties proportioned to the public miſchief of the offence.

II. But whatever be the form of an oath, the *ſignification* is the ſame. It is "the calling upon God to witneſs, *i. e.* to take notice of what we ſay; and it is invoking his vengeance, or renouncing his favour, if what we ſay be falſe, or what we promiſe be not performed."

III. Quakers and Moravians refuſe to ſwear upon any occaſion; founding their ſcruples concerning the *lawfulneſs* of oaths upon our Saviour's prohibition, *Matth*. v. 34. "I ſay unto you, ſwear not at all."

The anſwer which we give to this objection cannot be underſtood, without firſt ſtating the whole paſſage: "Ye have heard that it hath been ſaid by them of old time, thou ſhalt not forſwear thyſelf, but ſhalt perform unto the Lord thine oaths: but I ſay unto you, ſwear not at all; neither by heaven, for it is God's throne; nor by the earth, for it is his footſtool; neither by *Jeruſalem*, for it is the city of the great King; neither ſhalt thou ſwear by thy head, becauſe thou canſt not make one hair white or black: but let you communication be yea yea, nay nay, for whatſoever is more than theſe cometh of evil."

To reconcile with this paſſage of ſcripture the practice of ſwearing, or of taking oaths, when required by law, the following obſervations muſt be attended to.

1. It does not appear, that ſwearing "by heaven," "by the earth," "by *Jeruſalem*," or "by their own head," was a form of ſwearing ever made uſe of amongſt the *Jews* in judicial oaths: and conſequently, it is not probable that they were judicial oaths, which Chriſt had in his mind when he mentioned thoſe inſtances.

2. As to the ſeeming univerſality of the prohibition, "ſwear not at all," the emphatic clauſe "not at all," is to be read in connexion with what follows; "not at all," *i. e.* neither "by the heaven," nor "by the earth," nor "by *Jeruſalem*," nor "by thy head;" "*not at all*," does not mean upon no occaſion, but by none of theſe forms. Our Saviour's argument ſeems to ſuppoſe, that the people to whom he ſpake, made a diſtinction between ſwearing directly by "the name of God," and ſwearing by thoſe inferior objects of veneration, "the heavens," "the earth," "*Jeruſalem*," or "their own head." In oppoſition to which diſtinction he tells them, that, on account of the relation which theſe things bore to the Supreme Being, to ſwear by any of them, was in effect and ſubſtance to ſwear by *him*; "by heaven, for it is his throne; by the earth, for it is his footſtool; by *Jeruſalem*, for it is the city of the great King; by thy head, for it is his workmanſhip, not thine, thou canſt not make one hair white or black:" for which reaſon he ſays, "ſwear *not at all*," that is, neither directly by God, nor indirectly by any thing related to him. This interpretation is greatly con-

firmed, by a paſſage in the twenty-third chapter of the ſame Goſpel, where a ſimilar diſtinction, made by the Scribes and Phariſees, is replied to in the ſame manner.

3. Our Saviour himſelf being "adjured by the living God," to declare whether he was the Chriſt, the Son of God, or not, condeſcended to anſwer the high prieſt, without making any objection to the oath (for ſuch it was) upon which he examined him. "*God is my witneſs*," ſays St. *Paul* to the *Romans*, "that without ceaſing I make mention of you in my prayers.:" and to the *Corinthians* ſtill more ſtrongly, "*I call God for a record upon my ſoul*, that to ſpare you, I came not as yet to *Corinth*." Both theſe expreſſions contain the nature of oaths. The epiſtle to the *Hebrews* ſpeaks of the cuſtom of ſwearing judicially, without any mark of cenſure or diſapprobation: "Men verily ſwear by the greater, and an oath, for confirmation, is to them an end of all ſtrife."

Upon the ſtrength of theſe reaſons, we explain our Saviour's words to relate, not to judicial oaths, but to the practice of vain, wanton, and unauthorized ſwearing, in common diſcourſe. St. *James*' words, chap. v. 12. are not ſo ſtrong as our Saviour's, and therefore admit the ſame explanation with more eaſe.

IV. Oaths are nugatory, that is, carry with them no *proper* force or obligation, unleſs we believe, that God will puniſh falſe ſwearing with more ſeverity than a ſimple lie, or breach of promiſe; for which belief there are the following reaſons:

1. Perjury is a ſin of greater deliberation. The juror has the thought of God and of religion upon his mind at the time; at leaſt, there are very few who can ſhake them off entirely. He offends, therefore, if he do offend, with a high hand, in the face, that is, in defiance of the ſanctions of religion. His offence implies a diſbelief or contempt of God's

knowledge, power, and juſtice, which cannot be ſaid of a lie, where there is nothing to carry the mind to any reflection upon the Deity, or the divine attributes at all.

2. Perjury violates a ſuperior confidence. Mankind muſt truſt to one another; and they have nothing better to truſt to than one another's oath. Hence legal adjudications, which govern and affect every right and intereſt on this ſide the grave, of neceſſity proceed and depend upon oaths. Perjury, therefore, in its general conſequence, ſtrikes at the ſecurity of reputation, property, and even of life itſelf. A lie cannot do the ſame miſchief, becauſe the ſame credit is not given to it.*

3. God directed the *Iſraelites* to ſwear by his name;† and was pleaſed, "in order to ſhow the immutability of his own counſel,"‡ to confirm his covenant with that people by an oath: neither of which it is probable he would have done, had he not intended to repreſent oaths, as having ſome meaning and effect, beyond the obligation of a bare promiſe; which effect muſt be owing to the ſeverer puniſhment with which he will vindicate the authority of oaths.

V. Promiſſory oaths are *not binding*, where the promiſe itſelf would not be ſo: for the ſeveral caſes of which, ſee the Chapter of Promiſes.

VI. As oaths are deſigned for the ſecurity of the impoſer, it is manifeſt they muſt be *interpreted*, and performed in the ſenſe in which the impoſer intends them; otherwiſe, they afford no ſecurity to *him*. And this is the meaning and reaſon of the rule, "jurare in animum imponentis;" which rule the reader is deſired to carry along with him, whilſt we proceed to conſider certain particular oaths, which are either of greater importance, or more likely to fall in our way than others.

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* Except, indeed, where a Quaker's or Moravian's affirmation is accepted in the place of an oath; in which caſe, a lie partakes, ſo far as this reaſon extends, of the nature and guilt of perjury.

† Deut. vi. 13. x. 20. ‡ Heb. vi. 17.

Chapter XVII.

OATH IN EVIDENCE.

THE witneſs ſwears, "to ſpeak the truth, the whole truth, and nothing but the truth, touching the matter in queſtion."

Upon which it may be obſerved, that the deſigned concealment of any truth, which relates to the matter in agitation, is as much a violation of the oath, as to teſtify a poſitive falſehood; and this whether the witneſs be interrogated to that particular point or not. For, when the perſon to be examined is ſworn upon a *voir dire*, that is, in order to inquire, whether he ought to be admitted to give evidence in the cauſe at all, the form runs thus: "You ſhall true anſwer make to all ſuch queſtions as ſhall be aſked you;" but when he comes to be ſworn *in chief*, he ſwears "to ſpeak the whole truth," without reſtraining it, as before, to the queſtions that ſhall be aſked: which difference ſhews, that the law intends, in this latter caſe, to require of the witneſs, that he give a complete and unreſerved account of what he knows of the ſubject of the trial, whether the queſtions propoſed to him reach the extent of his knowledge or not. So that if it be inquired of the witneſs afterwards, why he did not inform the court ſo and ſo, it is not a ſufficient, though a very common anſwer, to ſay, "becauſe it was never aſked me."

I know but one exception to this rule; which is, when a full diſcovery of the truth tends to accuſe the witneſs himſelf of ſome legal crime. The law of *England* conſtrains no man to become his own accuſer; conſequently, impoſes the oath of teſtimony with this tacit reſervation. But the exception muſt be confined to *legal* crimes. A point of honour, of delicacy, or of reputation, may make a witneſs backward to diſcloſe ſome circumſtance with which he is acquainted; but will in no wiſe juſtify his concealment of the truth, unleſs it could be ſhewn, that the law which impoſes the oath, intended to allow this indulgence to ſuch motives. The exception of which we are ſpeaking is alſo withdrawn by a compact between the magiſtrate and the witneſs, when an accomplice is admitted to give evidence againſt the partners of his crime.

Tenderneſs to the priſoner, although a ſpecious apology for concealment, is no juſt excuſe; for, if this plea be thought ſufficient, it takes the adminiſtration of penal juſtice out of the hands of judges and juries, and makes it depend upon the temper of proſecutors and witneſſes.

Queſtions may be aſked which are irrelative to the cauſe, which affect the witneſs himſelf, or ſome third perſon; in which, and in all caſes, where the witneſs doubts of the pertinency and propriety of the queſtion, he ought to refer his doubts to the court. The anſwer of the court, in relaxation of the oath, is authority enough to the witneſs: for the law which impoſes the oath may remit what it will of the obligation; and it belongs to the court to declare what the mind of the law is. Nevertheleſs, it cannot be ſaid univerſally, that the anſwer of the court is concluſive upon the conſcience of the witneſs; for his obligation depends upon what he apprehended, at the time of taking the oath, to be the deſign of the law in impoſing it: and no after requiſition or explanation by the court can carry the obligation beyond that.

Chapter XVIII.

OATH OF ALLEGIANCE.

"I DO ſincerely promiſe, and ſwear, that I will be faithful and bear true *allegiance* to his Majeſty King GEORGE." Formerly the oath of allegiance ran thus: "I do promiſe to be true and faithful to the King and his heirs, and truth and faith to bear, of life, and limb, and terrene honour; and not to know or hear of any ill or damage intended him, without defending him therefrom:" and was altered at the Revolution to the preſent form. So that the preſent oath is a relaxation of the old one. And as the oath was intended to aſcertain, not ſo much the extent of the ſubject's obedience, as the perſon to whom it was due, the legiſlature ſeems to have wrapped up its meaning upon the former point, in a word purpoſely made choice of for its general and indeterminate ſignification.

It will be moſt convenient to conſider, firſt, what the oath excludes, as inconſiſtent with it: ſecondly, what it permits.

1. The oath excludes all intention to ſupport the claim or pretenſions of any other perſon or perſons, to the crown and government, than the reigning ſovereign. A *Jacobite*, who is perſuaded of the *Pretender's* right to the crown, and who moreover deſigns to join with the adherents of that cauſe, to aſſert this right, whenever a proper opportunity, with a reaſonable proſpect of ſucceſs, preſents itſelf, connot take the oath of allegiance; or, if he could, the oath of abjuration follows, which contains an expreſs renunciation of all opinions in favour of the claim of the exiled family.

2. The oath excludes all deſign at the time, of attempting to depoſe the reigning prince, for any reaſon whatever. Let the juſtice of the Revolution be what it would, no honeſt man could have taken even the preſent oath of allegiance to James the Second, who entertained at the time of taking it, a deſign of joining in the meaſures which were entered into to dethrone him.

3. The oath forbids the taking up of arms againſt the reigning prince, with views of private advancement, or from motives of perſonal reſentment or diſlike. It is poſſible to happen in this, what frequent-

ly happens in deſpotic governments, that an ambitious general, at the head of the military force of the nation, might, by a conjuncture of fortunate circumſtances, and a great aſcendency over the minds of the ſoldiery, depoſe the prince upon the throne, and make way to it for himſelf, or for ſome creature of his own. A perſon in this ſituation would be withheld from ſuch an attempt by the oath of allegiance, if he paid regard to it. If there were any who engaged in the rebellion of the year forty-five, with the expectation of titles, eſtates, or preferment; or becauſe they were diſappointed, and thought themſelves neglected and ill uſed at court; or becauſe they entertained a family animoſity, or perſonal reſentment againſt the king, the favourite, or the miniſter; if any were induced to take up arms by theſe motives, they added to the many crimes of an unprovoked rebellion, that of wilful and corrupt perjury. If, in the late American war, the ſame motives determined others to connect themſelves with that oppoſition, their part in it was chargeable with perfidy and falſehood to their oath, whatever was the juſtice of the oppoſition itſelf, or however well founded their own complaints might be of private injury.

We are next to conſider, what the oath of allegiance permits, or does not require.

1. It permits reſiſtance to the king, when his ill behaviour, or imbecility is ſuch, as to make reſiſtance beneficial to the community. It may fairly be preſumed, that the convention parliament, which introduced the oath in its preſent form, did not intend, by impoſing it, to exclude all reſiſtance; ſince the members of that legiſlature had many of them recently taken up arms againſt *James the Second:* and the very authority by which they ſat together, was itſelf the effect of a ſucceſsful oppoſition to an acknowledged ſovereign. Some reſiſtance, therefore, was meant to be allowed; and, if any, it muſt be that which has the public intereſt for its object.

2. The oath does not require obedience to ſuch commands of the king, as are unauthorized by law. No ſuch obedience is implied by the terms of the oath: the *fidelity* there promiſed, is intended of fidelity in oppoſition to his enemies, and not in oppoſition to law; and *allegiance*, at the utmoſt, can only ſignify obedience to lawful commands. Therefore, if the king ſhould iſſue a proclamation, levying money, or impoſing any ſervice or reſtraint upon the ſubject, beyond what the crown is impowered by law to enjoin, there would exiſt no ſort of obligation to obey ſuch a proclamation, in conſequence of having taken the oath of allegiance.

3. The oath does not require that we ſhould continue our allegiance to the king, after he is actually and abſolutely depoſed, driven into exile, carried away captive, or otherwiſe rendered incapable of exerciſing the regal office, whether by his fault or without it. The promiſe of allegiance implies, and is underſtood by all parties to ſuppoſe, that the perſon to whom the promiſe is made continues king; continues, that is, to exerciſe the power and afford the protection, which belongs to the office of king: for it is the poſſeſſion of this power, which makes ſuch a particular perſon the object of the oath; without it, why ſhould I ſwear allegiance to this man, rather than to any man in the kingdom? Beſide which, the contrary doctrine is burthened with this conſequence, that every conqueſt, revolution of government, or diſaſter which befals the perſon of the prince, muſt be followed by perpetual and irremediable anarchy.

Chapter XIX.

OATH AGAINST BRIBERY IN THE ELECTION OF MEMBERS OF PARLIAMENT.

"I DO ſwear I have not received, or had, by myſelf, or any perſon whatſoever, in truſt for me, or for my uſe and benefit, directly or indirectly, any ſum or ſums of money, office, place, or employment, gift, or reward, or any promiſe or ſecurity for any money, office, employment, or gift, in order to give my vote at this election."

The ſeveral contrivances to evade this oath, ſuch as the electors accepting money under colour of borrowing it, and giving a promiſory note, or other ſecurity for it, which is cancelled after the election; receiving money from a ſtranger, or a perſon in diſguiſe, or out of a drawer, or purſe, left open for the purpoſe; or promiſes of money to be paid after the election; or ſtipulating for a place, living, or other private advantage of any kind; if they eſcape the legal penalties of perjury, incur the moral guilt: for they are manifeſtly within the miſchief and deſign of the ſtatute which impoſes the oath; and within the terms, indeed, of the oath itſelf; for the word "indirectly" is inſerted on purpoſe to comprehend ſuch caſes as theſe.

Chapter XX.

OATH AGAINST SIMONY.

FROM an imaginary reſemblance between the purchaſe of a benefice and *Simon Magus'* attempt to purchaſe the gift of the Holy Ghoſt, *Acts* viii. 19. the obtaining of eccleſiaſtical preferment by pecuniary conſiderations has been called *Simony.*

The ſale of advowſons is inſeparable from the allowance of private patronage; as patronage would otherwiſe devolve to the moſt indigent, and, for that reaſon, the moſt improper hands it could be placed in. Nor did the law ever intend to prohibit the paſſing of advowſons from one patron to another; but to reſtrain the patron, who poſſeſſes the right of preſenting at the vacancy, from being influenced, in the choice of his preſentee, by a bribe, or benefit to himſelf. It is the ſame diſtinction with that which obtains in a freeholder's vote for his repreſentative in parliament. The right of voting, that is the freehold, to which the right pertains, may be bought and ſold, as freely as any other property; but the exerciſe of that right, the vote itſelf, may not be purchaſed, or influenced by money.

For this purpoſe, the law impoſes upon the preſentee, who is generally concerned in the ſimony, if there be any, the following oath: "I do ſwear, that I have made no *ſimoniacal* payment, contract, or promiſe, directly or indirectly, by myſelf, or by any other to my knowledge, or with my conſent, to any perſon or perſons whatſoever, for, or concerning the procureing and obtaining of this eccleſiaſtical place, &c. nor will, at any time hereafter, perform or ſatisfy, any ſuch kind of payment, contract or promiſe, made by any other without my knowledge or conſent: So help me God, through Jeſus Chriſt."

It is extraordinary, that Biſhop *Gibſon* ſhould have thought this oath to be againſt all promiſes whatſoever, when the terms of the oath expreſsly reſtrain it to *ſimoniacal* promiſes; and the law alone muſt pronounce what promiſes, as well as what payments, and contracts, are ſimoniacal, and conſequently, come within the oath; and what do not ſo.

Now the law adjudges to be ſimony,

1. All payments, contracts, or promiſes, made by any perſon, for a benefice *already vacant*. The advowſon of a void turn, by law cannot be transferred from one patron to another: therefore, if the void turn be procured by money, it muſt be by a pecuniary influence upon the then ſubſiſting patron in the choice of his preſentee; which is the very practice the law condemns.

2. A clergyman's purchaſing of the *next turn* of a benefice *for himſelf*, "directly or indirectly," that is, by himſelf, or by another perſon with his money. It does not appear, that the law prohibits a clergy-

man from purchaſing the perpetuity of a patronage, more than any other perſon; but purchaſing the perpetuity, and forthwith ſelling it again, with a reſervation of the next turn, and with no other deſign than to poſſeſs himſelf of the next turn, is *in fraudem legis*, and inconſiſtent with the oath.

3. The procuring of a piece of preferment, by ceding to the patron any rights, or probable rights, belonging to it. This is ſimony of the worſt kind; for it is not only buying preferment, but robbing the ſucceſſion to pay for it.

4. Promiſes to the patron of a portion of the profit, of a remiſſion of tythes and dues, or other advantage out of the produce of the benefice: which kind of compact is a pernicious condeſcenſion in the clergy, independent of the oath; for it tends to introduce a practice which may very ſoon become general, of giving the revenue of churches to the lay patrons, and ſupplying the duty by indigent ſtipendaries.

5. General bonds of reſignation, that is, bonds to reſign upon demand.

I doubt not but that the oath againſt ſimony is binding upon the conſciences of thoſe who take it, though I queſtion much the expediency of requiring it. It is very fit to debar public patrons, ſuch as the king, the lord chancellor, biſhops, eccleſiaſtical corporations, and the like, from this kind of traffic; becauſe, from them may be expected ſome regard to the qualifications of the perſons whom they promote. But the oath lays a ſnare for the integrity of the clergy; and I do not perceive, that the requiring of it, in caſes of private patronage, produces any good effect, ſufficient to compenſate for this danger.

Where advowſons are holden along with manors, or other principal eſtates, it would be an eaſy regulation to forbid that they ſhould ever hereafter be ſeparated; and would, at leaſt, keep church preferment out of the hands of brokers.

Chapter XXI.

OATHS TO OBSERVE LOCAL STATUTES.

MEMBERS of colleges in the univerſities, and of other ancient foundations, are required to ſwear to the obſervance of their reſpective ſtatutes: which obſervance is become in ſome caſes unlawful, in others impracticable, in others uſeleſs, in others inconvenient.

Unlawful directions are countermanded by the authority which made them unlawful.

Impracticable directions are diſpenſed with by the neceſſity of the caſe.

The only queſtion is, how far the members of theſe ſocieties may take upon themſelves to judge of the *inconveniency* of any particular direction, and make that a reaſon for laying aſide the obſervation of it.

The *animus imponentis*, which is the meaſure of the juror's duty, ſeems to be ſatisfied, when nothing is omitted, but what, from ſome change in the circumſtances under which it was preſcribed, it may fairly be preſumed that the founder himſelf would have diſpenſed with.

To bring a caſe within this rule, the *inconveniency* muſt,

1. Be manifeſt; concerning which there is no doubt.

2. It muſt ariſe from ſome change in the circumſtances of the inſtitution; for, let the inconveniency be what it will, if it exiſted at the time of the foundation, it muſt be preſumed, that the founder did not deem the avoiding of it of ſufficient importance to alter his plan.

3. The direction of the ſtatute muſt not only be inconvenient in the general, for ſo may the inſtitu-

tion itſelf be, but prejudicial to the particular end propoſed by the inſtitution; for it is this laſt circumſtance which proves that the founder would have diſpenſed with it in purſuance of his own purpoſe.

The ſtatutes of ſome colleges forbid the ſpeaking of any language but Latin, within the walls of the college; direct that a certain number, and not fewer than that number, be allowed the uſe of an apartment amongſt them; that ſo many hours of each day be employed in public exerciſes, lectures, or diſputations; and ſome other articles of diſcipline, adapted to the tender years of the ſtudents, who in former times reſorted to univerſities. Were colleges to retain ſuch rules, nobody now-a-days would come near them. They are laid aſide, therefore, though parts of the ſtatutes, and as ſuch included within the oath, not merely becauſe they are inconvenient, but becauſe there is ſufficient reaſon to believe, that the founders themſelves would have diſpenſed with them, as ſubverſive of their own deſigns.

Chapter XXII.

SUBSCRIPTION TO ARTICLES OF RELIGION.

SUBSCRIPTION to Articles of Religion, though no more than a *declaration* of the ſubſcriber's aſſent, may properly enough be conſidered in connexion with the ſubject of oaths, becauſe it is governed by the ſame rule of interpretation.

Which rule is the *animus imponentis*.

The inquiry, therefore, concerning ſubſcription will be, *quis impoſuit, et quo animo*.

The biſhop who receives the ſubſcription, is not the impoſer, any more than the cryer of a court, who adminiſters the oath to the jury and witneſſes, is the perſon that impoſes it; nor, conſequently, is the private opinion or interpretation of the biſhop of any ſignification to the ſubſcriber, one way or other.

The compilers of the thirty-nine articles are not to be conſidered as the impoſers of ſubſcription, any more than the framer or drawer up of a law is the perſon that enacts it.

The legiſlature of the 13 *Eliz.* is the impoſer, whoſe intention the ſubſcriber is bound to ſatisfy.

They who contend, that nothing leſs can juſtify ſubſcription to the thirty-nine articles, than the actual belief of each and every ſeparate propoſition contained in them, muſt ſuppoſe, that the legiſlature expected the conſent of ten thouſand men, and that in perpetual ſucceſſion, not to one controverted propoſition, but to many hundreds. It is difficult to conceive how this could be expected by any, who obſerved the incurable diverſity of human opinion upon all ſubjects ſhort of demonſtration.

If the authors of the law did not intend this, what did they intend?

They intended to exclude from offices in the church,

1. All abettors of popery.
2. Anabaptiſts, who were at that time a powerful party on the continent.
3. The Puritans, who were hoſtile to an epiſcopal conſtitution; and, in general, the members of ſuch leading ſects or foreign eſtabliſhments as threatened to overthrow our own.

Whoever finds himſelf comprehended within theſe deſcriptions, ought not to ſubſcribe. Nor can a ſubſcriber to the articles take advantage of any latitude which our rule may ſeem to allow, who is not firſt convinced that he is truly and ſubſtantially ſatisfying the intention of the legiſlature.

During the preſent ſtate of eccleſiaſtical patronage, in which private individuals are permitted to impoſe teachers upon pariſhes, with which they are often little or not at all connected, ſome limitation of the patron's choice may be neceſſary, to prevent unedifying contentions between neighbouring teachers, or between the teachers and their reſpective congregations. But this danger, if it exiſt, may be provided againſt with equal effect, by converting the articles of faith into articles of peace.

Chapter XXIII.

WILLS.

THE fundamental queſtion upon this ſubject is, whether Wills are of natural or of adventitious right? that is, whether the right of directing the diſpoſition of property after his death belongs to a man in a ſtate of nature, and by the law of nature, or whether it be given him entirely by the poſitive regulations of the country he lives in?

The immediate produce of each man's perſonal labour, as the tools, weapons, and utenſils, which he manufactures, the tent or hut he builds, and perhaps the flocks and herds which he breeds and rears, are as much his own as the labour was which he employed upon them, that is, are his property naturally and abſolutely; and conſequently he may give or leave them to whom he pleaſes, there being nothing to limit the continuance of his right, or to reſtrain the alienation of it.

But every other ſpecies of property, eſpecially property in land, ſtands upon a different foundation.

We have ſeen in the Chapter upon Property, that, in a ſtate of nature, a man's right to a particular ſpot of ground ariſes from his uſing it, and his wanting it; conſequently ceaſes with the uſe and want; ſo that at his death the eſtate reverts to the community, without any regard to the laſt owner's will, or even any preference of his family, farther than as they become the firſt occupiers after him, and ſucceed to the ſame want and uſe.

Moreover, as natural rights cannot, like rights created by act of parliament, expire at the end of a certain number of years; if the teſtator have a right by the law of nature, to diſpoſe of his property one moment after his death, he has the ſame right to direct the diſpoſition of it, for a million of ages after him; which is abſurd.

The ancient apprehenſions of mankind upon the ſubject were conformable to this account of it: for wills have been introduced into moſt countries by a poſitive act of the ſtate, as by the laws of *Solon* into *Greece*, by the twelve tables into *Rome*, and that, not till after a conſiderable progreſs had been made in legiſlation, and in the economy of civil life. *Tacitus* relates, that amongſt the *Germans* they were diſallowed; and, what is more remarkable, in this country, ſince the conqueſt, lands could not be deviſed by will, till within little more than two hundred years ago, when this privilege was reſtored to the ſubject, by an act of parliament in the latter end of the reign of Henry the Eighth.

No doubt many beneficial purpoſes are attained by extending the owner's power over his property beyond his life, and beyond his natural right. It invites to induſtry; it encourages marriage; it ſecures the dutifulneſs and dependency of children. But a limit muſt be aſſigned to the duration of this power. The utmoſt extent to which, in any caſe, entails are allowed by the laws of *England* to operate, is during the lives in exiſtence at the death of the teſtator, and one and twenty years beyond theſe: after which, there are ways and means of ſetting them aſide.

From the conſideration that wills are the creatures of the municipal law which gives them their efficacy, may be deduced a determination of the queſtion, whether the intention of the teſtator in an *informal* will be binding upon the conſcience of thoſe, who, by operation of law, ſucceed to his eſtate. By an *informal* will, I mean a will void in law, for want of ſome requiſite formality, though no doubt be entertained of its meaning or authenticity: as ſuppoſe a man make his will, deviſing his freehold eſtate to his ſiſter's ſon, and the will be atteſted by two only, inſtead of three ſubſcribing witneſſes; would the brother's ſon, who is heir at law to the teſtator, be bound in conſcience to reſign his claim to the eſtate, out of deference to his uncle's intention? Or, on the contrary, would not the deviſee under the will be bound, upon diſcovery of this flaw in it, to ſurrender the eſtate, ſuppoſe he had gained poſſeſſion of it, to the heir at law?

Generally ſpeaking, the heir at law is not bound by the intention of the teſtator. For the intention can ſignify nothing, unleſs the perſon intending have a right to govern the deſcent of the eſtate. That is the firſt queſtion. Now this right the teſtator can only derive from the law of the land; but the law confers the right upon certain conditions, with which conditions he has not complied. Therefore, the teſtator can lay no claim to the power which he pretends to exerciſe, as he hath not entitled himſelf to the benefit of that law, by virtue of which alone the eſtate ought to attend his diſpoſal. Conſequently, the deviſee under the will, who, by concealing this flaw in it, keeps poſſeſſion of the eſtate, is in the ſituation of any other perſon, who avails himſelf of his neighbour's ignorance to detain from him his property. The will is ſo much waſte paper, from the defect of right in the perſon who made it. Nor is this catching at an expreſſion of law to prevent the ſubſtantial deſign of it, for I apprehend it to be the deliberate mind of the legiſlature, that no will ſhould take effect upon real eſtates, unleſs authenticated in the preciſe manner which the ſtatute deſcribes. Had teſtamentary diſpoſitions been founded in any natural right, independent of poſitive conſtitutions, I ſhould have thought differently of this queſtion. For then I ſhould have conſidered the law, rather as refuſing its aſſiſtance to enforce the right of the deviſee, than as extinguiſhing, or working any alteration in the right itſelf.

And, after all, I ſhould chooſe to propoſe a caſe, where no conſideration of pity to diſtreſs, of duty to a parent, or of gratitude to a benefactor, interfered with the general rule of juſtice.

The regard due to kindred in the diſpoſal of our fortune (except the caſe of lineal kindred, which is different) ariſes either from the reſpect we owe to the preſumed intention of the anceſtor from whom we received our fortunes, or from the expectations which we have encouraged. The intention of the anceſtor is preſumed with greater certainty, as well as entitled to more reſpect, the fewer degrees he is removed from us, which makes the difference in the different degrees of kindred. For inſtance, it may be preſumed to be a father's intention and deſire, that the inheritance which he leaves, after it has ſerved the turn and generation of one ſon, ſhould remain a proviſion for the families of his other children, equally related and dear to him as the oldeſt. Whoever, therefore, without cauſe gives away his patrimony from his brother's or ſiſter's family, is guilty not ſo much of an injury to them, as of ingratitude to his parent. The deference due from the poſſeſſor of a fortune to the preſumed deſire of his anceſtor will alſo vary with this circumſtance, whether the anceſtor earned the fortune by his perſonal induſtry, acquired it by accidental ſucceſſes, or only tranſmitted the inheritance which he received.

Where a man's fortune is acquired by himſelf, and he has done nothing to excite expectation, but rather has refrained from thoſe particular attentions which tend to cheriſh expectation, he is perfectly diſengaged from the force of the above reaſons, and at liberty to leave his fortune to his friends, to charitable or public purpoſes, or to whom he will; the ſame blood, proximity of blood, and the like, are merely modes of ſpeech, implying nothing real, nor any obligation of themſelves.

There is always, however, a reaſon for providing for our poor relations, in preference to others who may be equally neceſſitous, which is, that if we do not, no one elſe will: mankind, by an eſtabliſhed conſent, leaving the reduced branches of good families to the bounty of their wealthy alliances.

The not making a will is a very culpable omiſſion, where it is attended with the following effects: where it leaves daughters or younger children at the mercy of the oldeſt ſon; where it diſtributes a perſonal fortune equally amongſt the children, although there be no equality in their exigences or ſituations; where it leaves an opening for litigation; or laſtly, and principally, where it defrauds creditors: for by a defect in our laws, which has been long and ſtrangely overlooked, real eſtates are not ſubject to the payment of debts by ſimple contract, unleſs made ſo by will; although credit is in fact generally given to the poſſeſſion of ſuch eſtates. He, therefore, who neglects to make the neceſſary appointments for the payment of his debts, as far as his effects extend, ſins, as it has been juſtly ſaid, in his grave; and, if he omits this on purpoſe to defeat the demands of his creditors, he dies with a deliberate fraud in his heart.

Anciently, when any one died without a will, the biſhop of the dioceſe took poſſeſſion of his perſonal fortune, in order to diſpoſe of it for the benefit of his ſoul, that is, to pious or charitable uſes. It became neceſſary, therefore, that the biſhop ſhould be ſatisfied of the authenticity of the will, when there was any, before he reſigned the right which he had to take poſſeſſion of the dead man's fortune, in caſe of inteſtacy. In this way, wills, and controverſies relating to wills, came within the cognizance of eccleſiaſtical courts; under the juriſdiction of which, wills of perſonals (the only wills that were made formerly) ſtill continue, though, in truth, no more now-a-days connected with religion, than any other inſtruments of conveyance. This is a peculiarity in the Engliſh law.

Succeſſion to *inteſtates* muſt be regulated by poſitive rules of law, there being no principle of natural juſtice whereby to aſcertain the proportion of the different claimants; not to mention that the claim itſelf, eſpecially of collateral kindred, ſeems to have little foundation in the law of nature. Theſe regulations ſhould be guided by the duty and preſumed inclination of the deceaſed, ſo far as theſe conſiderations can be conſulted by general rules. The ſtatutes of CHARLES the Second, commonly called the ſtatutes of diſtribution, which adopt the rule of the *Roman* law in the diſtribution of perſonals, are ſufficiently equitable. They aſſign one third to the widow, and two thirds to the children; in caſe of no children, one half to the widow, and the other half to the next of kin; where neither widow nor lineal deſcendants ſurvive, the whole to the next of kin, and to be equally divided amongſt kindred of equal degrees; without diſtinction of whole blood and half blood, or of conſanguinity by the father's or mother's ſide.

The deſcent of real eſtates, of houſes, that is, and land, having been ſettled in more remote and in ruder times, is leſs reaſonable. There never can be much to complain of in a rule, which every perſon may avoid by ſo eaſy a proviſion as that of making his will; otherwiſe, our law in this reſpect is chargeable with ſome flagrant abſurdities; ſuch as, that an eſtate ſhall in no wiſe go to the brother or ſiſter of the half blood, though it came to the deceaſed from the common parent; that it ſhall go to the remoteſt relation the inteſtate has in the world, rather than to his own father or mother, or even be forfeited for want of an heir, though both parents ſurvive; that the moſt diſtant paternal relation ſhould be preferred to an uncle or own couſin by the mother's ſide, notwithſtanding the eſtate was purchaſed and acquired by the inteſtate himſelf.

Land not being ſo diviſible as money, may be a reaſon for making a difference in the courſe of inheritance; but there ought to be no difference but what is founded upon that reaſon. The Roman law made none.

BOOK III.

Relative Duties.

PART II.

OF RELATIVE DUTIES WHICH ARE INDETERMINATE.

Chapter I.

CHARITY.

I USE the term Charity neither in the common ſenſe of bounty to the poor, nor in St. *Paul's* ſenſe of benevolence to all mankind, but I apply it at preſent, in a ſenſe more commodious to my purpoſe, to ſignify *the promoting the happineſs of our inferiors.*

Charity in this ſenſe I take to be the principal province of virtue and religion: for whilſt worldly prudence will direct our behaviour towards our ſuperiors, and politeneſs towards our equals, there is little beſide the conſideration of duty, or an habitual humanity, which comes into the place of conſideration, to produce a proper conduct towards thoſe who are beneath us, and dependent upon us.

There are three principal methods of promoting the happineſs of our inferiors.

1. By the treatment of our domeſtics and dependants.
2. By profeſſional aſſiſtance.
3. By pecuniary bounty.

Chapter II.

CHARITY.

TREATMENT OF OUR DOMESTICS AND DEPENDANTS.

A PARTY of friends ſetting out together upon a journey, ſoon find it to be the beſt for all ſides, that while they are upon the road, one of the company ſhould wait upon the reſt; another ride forward to ſeek out lodging and entertainment; a third carry the portmanteau; a fourth take charge of the horſes; a fifth bear the purſe, conduct and direct the rout: not forgetting, however, that as they were equal and independent when they ſet out, ſo they are all to return to a level again at their journey's end. The ſame regard and reſpect; the ſame forbearance, lenity, and reſerve in uſing their ſervice; the ſame mildneſs in delivering commands; the ſame ſtudy to make their journey comfortable and pleaſant, which he, whoſe lot it was to direct the reſt, would in common decency think himſelf bound to obſerve towards them; ought we to ſhew to thoſe, who, in the caſting of the parts of human ſociety, happen to be placed within our power, or to depend upon us.

Another reflection of a like tendency with the former, is, that our obligation to them is much greater than theirs to us. It is a miſtake to ſuppoſe, that the rich man maintains his ſervants, tradeſmen, tenants, and labourers: the truth is, they maintain him. It is their induſtry which ſupplies his table, furniſhes his wardrobe, builds his houſes, adorns his equipage, provides his amuſements. It is not the eſtate, but the labour employed upon it, that pays his rent. All that he does is to diſtribute what others produce; which is the leaſt part of the buſineſs.

Nor do I perceive any foundation for an opinion, which is often handed round in genteel company, that good uſage is thrown away upon low and ordinary minds; that they are inſenſible of kindneſs, and incapable of gratitude. If by "low and ordinary minds" are meant the minds of men in low and ordinary ſtations, they ſeem to be affected by benefits in the ſame way that all others are, and to be no leſs ready to requite them: and it would be a very unaccountable law of nature if it were otherwiſe.

Whatever uneaſineſs we occaſion to our domeſtics, which neither promotes our ſervice, nor anſwers the juſt ends of puniſhment, is manifeſtly wrong; were it only upon the general principle of diminiſhing the ſum of human happineſs.

By which rule we are forbidden,

1. To enjoin unneceſſary labour or confinement, from the mere love and wantonneſs of domination.

2. To inſult our ſervants by harſh, ſcornful, or opprobrious language.

3. To refuſe them any harmleſs pleaſures.

And by the ſame principle are alſo forbidden cauſeleſs or immoderate anger, habitual peeviſhneſs, and groundleſs ſuſpicion.

Chapter III.

SLAVERY.

THE prohibitions of the laſt Chapter extend to the treatment of ſlaves, being founded upon a principle independent of the contract between maſters and ſervants.

I define ſlavery to be "an obligation to labour for the benefit of the maſter, without the contract or conſent of the ſervant."

This obligation may ariſe, conſiſtently with the law of nature, from three cauſes:

1. From crimes.
2. From captivity.
3. From debt.

In the firſt caſe, the continuance of the ſlavery, as of any other puniſhment, ought to be proportioned to the crime; in the ſecond and third caſes, it ought to ceaſe, as ſoon as the demand of the injured nation or private creditor is ſatisfied.

The ſlave-trade upon the coaſt of Africa is not excuſed by theſe principles. When ſlaves in that country are brought to market, no queſtions, I believe, are aſked about the origin or juſtice of the vendor's title. It may be preſumed, therefore, that this title is not always, if it be ever, founded in any of the cauſes above aſſigned.

But defect of right in the firſt purchaſe is the leaſt crime, with which this traffic is chargeable. The natives are excited to war and mutual depredation, for the ſake of ſupplying their contracts, or furniſhing the market with ſlaves. With this the wickedneſs begins. The ſlaves, torn away from parents, wives, children, from their friends and companions, their fields and flocks, their home and country, are tranſported to the European ſettlements in America, with no other accommodation on ſhipboard, than what is provided for brutes. This is the ſecond ſtage of cruelty, from which the miſerable exiles are delivered, only to be placed, and that for life, in ſubjection to a dominion and ſyſtem of laws, the moſt mercileſs and tyrannical that ever were tolerated upon the face of the earth: and from all that can be learned by the accounts of the people upon the ſpot, the inordinate authority, which the plantation laws confer upon the ſlave-holder, is exerciſed, by the *Engliſh* ſlave-holder, eſpecially, with rigour and brutality.

But *neceſſity* is pretended; the name under which every enormity is attempted to be juſtified. And, after all, what is the neceſſity? It has never been proved that the land could not be cultivated there, as it is here, by hired ſervants. It is ſaid that it could not be cultivated with quite the ſame conveniency and cheapneſs, as by the labour of ſlaves: by which means, a pound of ſugar, which the planter now ſells for ſixpence could not be afforded under ſixpence halfpenny—and this is the *neceſſity!*

The great revolution which has taken place in the Weſtern World may probably conduce (and who knows but that it was deſigned?) to accelerate the fall of this abominable tyranny: and now that this conteſt, and the paſſions which attend it, are no more, there may ſucceed perhaps a ſeaſon for reflecting, whether a legiſlature, which had ſo long lent its aſſiſtance to the ſupport of an inſtitution replete with human miſery, was fit to be truſted with an empire, the moſt extenſive that ever obtained in any age or quarter of the world.

Slavery was a part of the civil conſtitution of moſt countries, when Chriſtianity appeared; yet no paſſage is to be found in the Chriſtian ſcriptures, by which it is condemned or prohibited. This is true; for Chriſtianity, ſoliciting admiſſion into all nations of the world, abſtained, as behoved it, from intermeddling with the civil inſtitutions of any. But does it follow, from the ſilence of ſcripture concerning them, that all the civil inſtitutions which then prevailed, were right? or that the bad ſhould not be exchanged for better?

Beſide this, the diſcharging of ſlaves from all obligation to obey their maſters, which is the conſequence of pronouncing ſlavery to be unlawful, would have had no better effect, than to let looſe one half of mankind upon the other. Slaves would have been tempted to embrace a religion, which aſſerted their right to freedom. Maſters would hardly have been perſuaded to conſent to claims founded upon ſuch authority. The moſt calamitous of all conteſts, a *bellum ſervile*, might probably have enſued, to the reproach, if not the extinction of the Chriſtian name.

The truth is, the emancipation of ſlaves ſhould be gradual; and be carried on by proviſions of law, and under the protection of civil government. Chriſtianity can only operate as an alterative. By the mild diffuſion of its light and influence, the minds of men are inſenſibly prepared to perceive and correct the enormities, which folly, or wickedneſs, or accident, have introduced into their public eſtabliſhments. In this way the *Greek* and *Roman* ſlavery, and ſince theſe the feudal tyranny, has declined before it. And we truſt that, as the knowledge and authority of the ſame religion advance in the world, they will baniſh what remains of this odious inſtitution.

Chapter IV.

CHARITY.

PROFESSIONAL ASSISTANCE.

THIS kind of beneficence is chiefly to be expected from members of the legiſlature, magiſtrates, medical, legal, and ſacerdotal profeſſions.

1. The care of the poor ought to be the principal object of all laws, for this plain reaſon, that the rich are able to take care of themſelves.

Much has been, and more might be done, by the laws of this country, towards the relief of the impotent, and the protection and encouragement of the induſtrious poor. Whoever applies himſelf to collect obſervations upon the ſtate and operation of the poor laws, and to contrive remedies for the imperfections and abuſes which he obſerves, and digeſts theſe remedies into acts of parliament, and conducts them by argument or influence through the two branches of the legiſlature, or communicates his ideas to thoſe, who are more likely to carry them into effect; deſerves well of a claſs of the community ſo numerous, that their happineſs forms a principal part of the whole. The ſtudy and activity thus employed is charity, in the moſt meritorious ſenſe of the word.

2. The application of parochial relief is entruſted in the firſt inſtance to overſeers and contractors, who have an intereſt in oppoſition to that of the poor, inaſmuch as whatever they allow them comes in part out of their own pocket. For this reaſon, the law has depoſited with juſtices of the peace, a power of ſuperintendence and control; and the judicious interpoſition of this power is a moſt uſeful exertion of charity, and ofttimes within the ability of thoſe, who have no other way of ſerving their generation. A country gentleman of very moderate education, and who has little to ſpare from his fortune, by learning ſo much of the poor law as is to be found in Dr. *Burn's Juſtice*, and by furniſhing himſelf with a knowledge of the prices of labour and proviſion, ſo as to be able to eſtimate the exigences of a family, and what is to be expected from their induſtry, may, in this way, place out the one talent committed to him to great account.

3. Of all private profeſſions, that of medicine puts it in a man's power to do the moſt good at the leaſt expenſe. Health, which is precious to all, is to the poor invaluable; and their complaints, as agues, rheumatiſms, &c. are often ſuch as yield to medicine. And with reſpect to the expenſe, drugs at firſt hand coſt little, and advice coſts nothing, where it is only beſtowed upon thoſe who could not afford to pay for it.

4. The rights of the poor are not ſo important or intricate as their contentions are violent and ruinous. A Lawyer or Attorney, of tolerable knowledge in his profeſſion, has commonly judgment enough to

adjuſt theſe diſputes, with all the effect, and without the expenſe, of a law-ſuit; and he may be ſaid to *give* a poor man twenty pounds, who prevents his throwing it away upon law. A *legal* man, whether of the profeſſion or not, who, together with a ſpirit of conciliation, poſſeſſes the confidence of his neighbourhood, will be much reſorted to for this purpoſe, eſpecially ſince the great increaſe of coſts has produced a general dread of going to law.

Nor is this line of beneficence confined to *arbitration.* Seaſonable counſel, coming with the weight which the reputation of the adviſer gives it, will often keep or extricate the raſh and uninformed out of great difficulties.

Laſtly, I know not a more exalted charity than that which preſents a ſhield againſt the rapacity or perſecution of a tyrant.

5. Betwixt argument and authority (I mean that authority which flows from voluntary reſpect, and attends upon ſanctity and diſintereſtedneſs of character) ſomething may be done amongſt the lower orders of mankind, towards the regulation of their conduct, and the ſatisfaction of their thoughts. This office belongs to the miniſters of religion; or rather whoever undertakes it becomes a miniſter of religion. The inferior clergy, who are nearly upon a level with the common ſort of their pariſhioners, and who on that account gain an eaſier admiſſion to their ſociety and confidence, have in this reſpect more in their power than their ſuperiors: the diſcreet uſe of this power conſtitutes one of the moſt reſpectable functions of human nature.

Chapter V.

CHARITY.

PECUNIARY BOUNTY.

I. *The obligation to beſtow relief upon the poor.*
II. *The manner of beſtowing it.*
III. *The pretences by which men excuſe themſelves from it.*

I. *The obligation to beſtow relief upon the poor.*

THEY who rank pity amongſt the original impulſes of our nature, rightly contend, that, when this principle prompts us to the relief of human miſery, it indicates the divine intention, and our duty. Indeed the ſame concluſion is deducible from the exiſtence of the paſſion, whatever account be given of its origin. Whether it be an inſtinct or a habit, it is in fact a property of our nature, which God appointed: and the final cauſe, for which it was appointed, is to afford to the miſerable, in the compaſſion of their fellow-creatures, a remedy for thoſe inequalities and diſtreſſes which God foreſaw that many muſt be expoſed to, under every general rule for the diſtribution of property.

Beſide this, the poor have a claim founded in the law of nature, which may be thus explained. All things were originally common. No one being able to produce a charter from heaven, had any better title to a particular poſſeſſion than his next neighbour. There were reaſons for mankind's agreeing upon a ſeparation of this common fund; and God for theſe reaſons is preſumed to have ratified it. But this ſeparation was made and conſented to, upon the expectation and condition, that every one ſhould have left a ſufficiency for his ſubſiſtence, or the means of procuring it: and as no fixed laws for the regulation of property can be ſo contrived, as to provide for the relief of every caſe and diſtreſs which may ariſe, theſe caſes and diſtreſſes, when their right and ſhare in the common ſtock was given up or taken from them, were ſuppoſed to be left to the voluntary bounty of thoſe, who might be acquainted with the exigencies of their ſituation, and in the way of affording aſſiſtance. And therefore, when the partition of property is rigidly maintained againſt the claims of indigence and diſtreſs, it is maintained in oppoſition to the intention of thoſe who made it, and to *his*, who is the Supreme Proprietor of every thing, and who has filled the world with plenteouſneſs for the ſuſtentation and comfort of all whom he ſends into it.

The Chriſtian ſcriptures are more copious and explicit upon this duty than upon almoſt any other. The deſcription which Chriſt hath left us of the proceedings of the laſt day, eſtabliſhes the obligation of bounty, beyond controverſy. "When the Son of Man ſhall come in his glory, and all the holy angels with him, then ſhall he ſit upon the throne of his glory, and before him ſhall be gathered all nations; and he ſhall ſeparate them one from another.—Then ſhall the King ſay unto them on his right hand, Come, ye bleſſed of my Father, inherit the kingdom prepared for you from the foundation of the world: For I was an hungered, and ye gave me meat: I was thirſty, and ye gave me drink: I was a ſtranger, and ye took me in: naked, and ye clothed me: I was ſick, and ye viſited me: I was in priſon, and ye came unto me.—And inaſmuch as ye have done it to one of the leaſt of theſe my brethren, ye have done it unto me."* It is not neceſſary to underſtand this paſſage as a literal account of what will actually paſs on that day. Suppoſing it only a ſcenical deſcription of the rules and principles, by which the Supreme Arbiter of our deſtiny will regulate his deciſions, it conveys the ſame leſſon to us; it equally demonſtrates, of how great value and importance theſe duties in the ſight of God are, and what ſtreſs will be laid upon them. The Apoſtles alſo deſcribe this virtue as propitiating the divine favour in an eminent degree. And theſe recommendations have produced their effect. It does not appear that, before the times of Chriſtianity, an infirmary, hoſpital, or public charity of any kind, exiſted in the world; whereas moſt countries in Chriſtendom have long abounded with theſe inſtitutions. To which may be added, that a ſpirit of private liberality ſeems to flouriſh amidſt the decay of many other virtues: not to mention the legal proviſion for the poor, which obtains in this country, and which was unknown and unthought of by the moſt humanized nations of antiquity.

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* Matth. xxv. 31.

St. Paul adds upon the ſubject an excellent direction; and which is practicable by all who have any thing to give. "Upon the firſt day of the week (or any other ſtated time) let every one of you lay by in ſtore, as God hath proſpered him." By which I underſtand St. Paul to recommend what is the very thing wanting with moſt men, *the being charitable upon a plan;* that is, from a deliberate compariſon of our fortunes with the reaſonable expenſes and expectation of our families, to compute what we can ſpare, and to lay by ſo much for charitable purpoſes in ſome mode or other. The *mode* will be a conſideration afterwards.

The effect which Chriſtianity produced upon ſome of its firſt converts, was ſuch as might be looked for from a divine religion coming with full force and miraculous evidence upon the conſciences of mankind. It overwhelmed all worldly conſiderations, in the expectation of a more important exiſtence. "And the multitude of them that believed were of one heart and of one ſoul; neither ſaid any of them that ought of the things which he poſſeſſed was his own; but they had all things in common.—Neither was there any among them that lacked; for as many as were poſſeſſors of lands or houſes ſold them, and brought the prices of the things that were ſold, and laid them down at the Apoſtles' feet; and diſtribution was made unto every man according as he had need." Acts, iv. 32.

Nevertheleſs, this community of goods, however it manifeſted the ſincere zeal of the primitive Chriſtians, is no precedent for our imitation. It was confined to the church at *Jeruſalem ;* continued not long there ; was never enjoined upon any (Acts, v. 4) ; and although it might ſuit with the particular circumſtances of a ſmall and ſelect ſociety, is altogether impracticable in a large and mixed community.

The conduct of the Apoſtles upon the occaſion deſerves to be noticed. Their followers laid down their fortunes at their feet : but ſo far were they from taking advantage of this unlimited confidence to enrich themſelves, or eſtabliſh their own authority, that they ſoon after got rid of this buſineſs, as inconſiſtent with the main object of their miſſion, and transferred the cuſtody and management of the public fund, to deacons, elected to that office by the people at large. (Acts vi.)

II. *The manner of beſtowing bounty—or the different kinds of charity.*

Every queſtion between the different kinds of charity ſuppoſes the ſum beſtowed to be the ſame.

There are three kinds of charity which prefer a claim to attention.

The firſt, and in my judgment, one of the beſt, is to give ſtated and conſiderable ſums, by way of penſion or annuity to individuals or families, with whoſe behaviour and diſtreſs we ourſelves are acquainted. When I ſpeak of *conſiderable* ſums, I mean only, that five pounds, or any other ſum, given at once, or divided amongſt five or fewer families, will do more good than the ſame ſum diſtributed amongſt a greater number in ſhillings or half crowns ; and that, becauſe it is more likely to be properly applied by the perſons who receive it. A poor fellow, who can find no better uſe for a ſhilling than to drink his benefactor's health, and purchaſe half an hour's recreation for himſelf, would hardly break into a guinea for any ſuch purpoſe, or be ſo improvident, as not to lay it by for an occaſion of importance, *e.g.* for his rent, his clothing, fuel, or ſtock of winter's proviſion. It is a ſtill greater recommendation of this kind of charity, that penſions and annuities, which are paid regularly, and can be expected at the time, are the only way by which we can prevent one part of the poor man's ſufferings, the dread of want.

2. But as this kind of charity ſuppoſes that proper objects of ſuch expenſive benefactions fall within our private knowledge and obſervation, which does not happen to all, a ſecond method of doing good, which is in every one's power who has the money to ſpare, is by ſubſcription to public charities. Public charities admit of this argument in their favour, that your money goes farther towards attaining the end for which it is given, than it can do by any private and ſeparate beneficence. A guinea, for example, contributed to an infirmary, becomes the means of providing one patient at leaſt with a phyſician, ſurgeon, apothecary, with medicine, diet, lodging, and ſuitable attendance; which is not the tenth part of what the ſame aſſiſtance, if it could be procured at all, would coſt to a ſick perſon or family in any other ſituation.

3. The laſt, and, compared with the former, the loweſt exertion of benevolence, is in the relief of beggars. Neverthleſs, I by no means approve the indiſcriminate rejection of all who implore our alms in this way. Some may periſh by ſuch a conduct. Men are ſometimes overtaken by diſtreſs, for which all other relief would come too late. Beſide which, reſolutions of this kind compel us to offer ſuch violence to our humanity, as may go near, in a little while, to ſuffocate the principle itſelf; which is a very ſerious conſideration. A good man, if he do not fur-

render himſelf to his feelings without reſerve, will at leaſt lend an ear to importunities, which come accompanied with outward atteſtations of diſtreſs; and after a patient audience of the complaint, will direct himſelf, not ſo much by any previous reſolution which he may have formed upon the ſubject, as by the circumſtances and credibility of the account that he receives.

There are other ſpecies of charity well contrived to make the money expended *go far*; ſuch as keeping down the price of fuel or proviſion, in caſe of a monopoly or temporary ſcarcity, by purchaſing the articles at the beſt market, and retailing them at prime coſt, or at a ſmall loſs; or the adding of a bounty to particular ſpecies of labour, when the price is accidentally depreſſed.

The proprietors of large eſtates have it in their power to facilitate the maintainance, and thereby to encourage the eſtabliſhment of families (which is one of the nobleſt purpoſes to which the rich and great can convert their endeavours) by building cottages, ſplitting farms, erecting manufactures, cultivating waſtes, embanking the ſea, draining marſhes, and other expedients, which the ſituation of each eſtate points out. If the profits of theſe undertakings do not repay the expenſe, let the authors of them place the difference to the account of charity. It is true of almoſt all ſuch projects, that the public is a gainer by them whatever the owner be. And where the loſs can be ſpared, this conſideration is ſufficient.

It is become a queſtion of ſome importance, under what circumſtances works of charity ought to be done in private, and when they may be made public without detracting from the merit of the action, if indeed they ever may; the Author of our religion having delivered a rule upon this ſubject which ſeems to enjoin univerſal ſecrecy; "When thou doeſt alms, let not thy left hand know what thy right hand doth; that thy alms may be in ſecret, and thy Father which ſeeth in ſecret, himſelf ſhall reward thee openly." (Matt. vi. 3, 4.) From the preamble to this prohibition I think it, however, plain, that our Saviour's ſole deſign was to forbid *oſtentation*, and all publiſhing of good works which proceed from that motive. "Take heed that ye do not your alms before men, *to be ſeen of them;* otherwiſe ye have no reward of your Father which is in heaven: therefore, when thou doeſt thine alms, do not ſound a trumpet before thee, as the hypocrites do, in the ſynagogues and in the ſtreets, *that they may have glory of men.* Verily I ſay unto thee, they have their reward." v. 2. There are motives for the doing our alms in public beſide thoſe of *oſtentation;* with which therefore our Saviour's rule has no concern: ſuch as to teſtify our approbation of ſome particular ſpecies of charity, and to recommend it to others; to take off the prejudice, which the want, or, which is the ſame thing, the ſuppreſſion of our name in the liſt of contributors might excite againſt the charity, or againſt ourſelves. And, ſo long as theſe motives are free from any mixture of vanity, they are in no danger of invading our Saviour's prohibition: they rather ſeem to comply with another direction which he has left us: "Let your light ſo ſhine before men, that they may ſee your good works, and glorify your Father which is in heaven." If it be neceſſary to propoſe a preciſe diſtinction upon the ſubject, I can think of none better than the following. When our bounty is *beyond* our fortune or ſtation, that is, when it is more than could be expected from us, our charity ſhould be private, if privacy be practicable: when it is not more than might be expected, it may be public: for we cannot hope to influence others to the imitation of *extraordinary* generoſity, and therefore want, in the former caſe, the only juſtifiable reaſon for making it public.

Having thus deſcribed ſeveral different exertions of charity, it may not be improper to take notice of a ſpecies of liberality, which is not *charity* in any ſenſe of the word: I mean the giving of entertainments or liquor, for the ſake of popularity; or the rewarding, treating, and maintaining the companions of our diverſions, as hunters, ſhooters, fiſhers, and the like. I do not ſay that this is criminal; I only ſay that it is not charity; and that we are not to ſuppoſe, becauſe we *give*, and give to the *poor*, that it will ſtand in the place, or ſuperſede the obligation, of more meritorious and diſintereſted bounty.

III. *The pretences by which men excuſe themſelves from giving to the poor.*

1. "That they have nothing to ſpare," i. e. nothing for which they have not provided ſome other uſe; nothing which their plan of expenſe, together with the ſavings they have reſolved to lay by, will not exhauſt: never reflecting whether it be in their *power*, or that it is their *duty* to retrench their expenſes, and contract their plan, "that they may have to give to them that need;" or rather that this ought to have been part of their plan originally.

2. "That they have families of their own, and that charity begins at home." The extent of this plea will be conſidered, when we come to explain the duty of parents.

3. "That charity does not conſiſt in giving money, but in benevolence, philanthropy, love to all mankind, goodneſs of heart, &c." Hear St. James. "If a brother or ſiſter be naked, and deſtitute of daily food, and one of you ſay unto them, Depart in peace, be ye warmed and filled, notwithſtanding *ye give them not thoſe things which are needful to the body*, what doth it profit?" (James ii. 15, 16.)

4. "That giving to the poor is not mentioned in St. Paul's deſcription of charity, in the thirteenth chapter of his firſt Epiſtle to the Corinthians." This is not a deſcription of charity, but of good-nature; and it is not neceſſary that every duty be mentioned in every place.

5. "That they pay the poor rates." They might as well allege that they pay their debts; for the poor have the ſame right to that portion of a man's property, which the laws aſſign to them, that the man himſelf has to the remainder.

6. "That they employ many poor perſons:"—for their own ſake, not the poor's; otherwiſe it is a good plea.

7. "That the poor do not ſuffer ſo much as we imagine; that education and habit have reconciled them to the evils of their condition, and make them eaſy under it." Habit can never reconcile human nature to the extremities of cold, hunger, and thirſt, any more than it can reconcile the hand to the touch of a red-hot iron: beſides, the queſtion is not, how unhappy any one is, but how much more happy we can make him.

8. "That theſe people, give them what you will, will never thank you, or think of you for it." In the firſt place, this is not true: in the ſecond place, it was not for the ſake of their thanks that you relieved them.

9. "That we are liable to be impoſed upon." If a due inquiry be made, our merit is the ſame: beſide that, the diſtreſs is generally real, although the cauſe be untruly ſtated.

10. "That they ſhould apply to their pariſhes." This is not always practicable: to which we may add, that there are many requiſites to a comfortable ſubſiſtence, which pariſh relief does not ſupply; and that there are ſome, who would ſuffer almoſt as much from receiving pariſh relief, as by the want of it; and laſtly, that there are many modes of charity, to which this anſwer does not relate at all.

11. "That giving money encourages idleneſs and vagrancy." This is true only of injudicious and indiſcriminate generoſity.

12. "That we have too many objects of charity at home, to beſtow any thing upon ſtrangers; or

that there are other charities, which are more uſeful, or ſtand in greater need." The value of this excuſe depends entirely upon the *fact*, whether we actually relieve thoſe neighbouring objects, and contribute to thoſe other charities.

Beſide all theſe excuſes, pride, or prudery, or delicacy, or love of eaſe, keep one half of the world out of the way of obſerving what the other half ſuffer.

Chapter VI.

RESENTMENT.

RESENTMENT may be diſtinguiſhed into *anger* and *revenge*.

By *anger*, I mean the pain we ſuffer upon the receipt of an injury or affront, with the uſual effects of that pain upon ourſelves.

By *revenge*, the inflicting of pain upon the perſon who has injured or offended us, farther than the juſt ends of puniſhment or reparation require.

Anger prompts to revenge; but it is poſſible to ſuſpend the effect, when we cannot altogether quell the principle. We are bound alſo to endeavour to qualify and correct the principle itſelf. So that our duty requires two different applications of the mind: and, for that reaſon, anger and revenge may be conſidered ſeparately.

Chapter VII.

ANGER.

"BE ye angry and ſin not;" therefore all anger is not ſinful: I ſuppoſe, becauſe ſome degree of it, and upon ſome occaſions, is inevitable.

It becomes ſinful, or contradicts, however, the rule of ſcripture, when it is conceived upon ſlight and inadequate provocations, and when it continues long.

1. When it is conceived upon ſlight provocations; for, "charity ſuffereth long, is not eaſily provoked." "Let every man be ſlow to anger." Peace, long ſuffering, gentleneſs, meekneſs, are enumerated among the fruits of the Spirit, Gal. v. 22. and compoſe the true Chriſtian temper, as to this article of duty.

2. When it continues long; for, "let not the ſun go down upon your wrath."

Theſe precepts, and all reaſoning indeed upon the ſubject, ſuppoſe the paſſion of anger to be within our power: and this power conſiſts not ſo much in any faculty we poſſeſs of appeaſing our wrath at the time (for we are paſſive under the ſmart which an injury or affront occaſions, and all we can then do is to prevent its breaking out into action) as in ſo mollifying our minds by habits of juſt reflection, as to be leſs irritated by impreſſions of injury, and to be ſooner pacified.

Reflections proper for this purpoſe, and which may be called the *ſedatives* of anger, are the following: the poſſibility of miſtaking the motives from which the conduct that offends us proceeded; how often *our* offences have been the effect of inadvertency, when they were conſtrued into indications of malice; the inducement which prompted our adverſary to act as he did, and how powerfully the ſame inducement has, at one time or other, operated upon ourſelves; that he is ſuffering perhaps under a contrition, which he is aſhamed, or wants opportunity, to confeſs; and how ungenerous it is to triumph by coldneſs or inſult over a ſpirit already humbled in ſecret; that the returns of kindneſs are ſweet, and that there is neither honour, nor virtue, nor uſe in reſiſting them—for ſome perſons think themſelves bound to cheriſh and keep alive their indignation, when they find it dying away of itſelf. We may remember that others have their paſſions, their prejudices, their favourite aims, their fears, their cautions, their intereſts, their ſudden impulſes, their varieties of apprehenſion, as well as we: we may recollect what hath ſometimes paſſed in our own minds, when we have got on the wrong ſide of a quarrel, and imagine the ſame to be paſſing in our adverſary's mind now; when we become ſenſible of our miſbehaviour, what palliations we perceived in it, and expected others to perceive: how we were affected by the kindneſs, and felt the ſuperiority of a generous reception and ready forgiveneſs; how perſecution revived our ſpirits with our enmity, and ſeemed to juſtify the conduct in ourſelves, which we before blamed. Add to this, the indecency of extravagant anger; how it renders us, whilſt it laſts, the ſcorn and ſport of all about us, of which it leaves us, when it ceaſes, ſenſible and aſhamed; the inconveniences, and irretrievable miſconduct into which our iraſcibility has ſometimes betrayed us; the friendſhips it has loſt us; the diſtreſſes and embarraſſments in which we have been involved by it; and the ſore repentance which on one account or other it always coſts us.

But the reflection calculated above all others to allay the haughtineſs of temper which is ever finding out provocations, and which renders anger ſo impetuous, is that which the goſpel propoſes; namely, that we ourſelves are, or ſhortly ſhall be, ſuppliants for mercy and pardon at the judgment ſeat of God. Imagine our ſecret ſins diſcloſed and brought to light; imagine us thus humbled and expoſed; trembling under the hand of God; caſting ourſelves on his compaſſion; crying out for mercy: imagine ſuch a creature to talk of ſatisfaction and revenge; refuſing to be entreated, diſdaining to forgive; extreme to mark and to reſent what is done amiſs; imagine

I ſay this, and you can hardly feign to yourſelf an inſtance of more impious and unnatural arrogance.

The point is to habituate ourſelves to theſe reflections, till they riſe up of their own accord when they are wanted, that is, inſtantly upon the receipt of an injury or affront, and with ſuch force and colouring, as both to mitigate the paroxiſms of our anger at the time, and at length to produce an alteration in the temper and diſpoſition itſelf.

Chapter VIII.

REVENGE.

ALL pain occaſioned to another in conſequence of an offence, or injury received from him, farther than what is calculated to procure reparation, or promote the juſt ends of puniſhment, is ſo much revenge.

There can be no difficulty in knowing when we occaſion pain to another; nor much in diſtinguiſhing whether we do ſo, with a view only to the ends of puniſhment, or from revenge; for in the one caſe we proceed with reluctance, in the other with pleaſure.

It is highly *probable* from the light of nature, that a paſſion, which ſeeks its gratification immediately and expreſsly in giving pain, is diſagreeable to the benevolent will and counſels of the Creator. Other paſſions and pleaſures may, and often do, produce pain to ſome one; but then pain is not, as it is here, the object of the paſſion, and the direct cauſe of the pleaſure. This *probability* is converted into certainty, if we give credit to the authority which dictated the ſeveral paſſages of the Chriſtian ſcriptures that condemn revenge, or, what is the ſame thing, which enjoin forgiveneſs.

We will ſet down the principal of theſe paſſages; and endeavour to collect from them, what conduct upon the whole is allowed towards an enemy, and what is forbidden.

"If ye forgive men their treſpaſſes, your heavenly Father will alſo forgive you; but if ye forgive not men their treſpaſſes, neither will your Father forgive your treſpaſſes." "And his lord was wroth, and delivered him to the tormentors, till he ſhould pay all that was due unto him: ſo likewiſe ſhall my heavenly Father do alſo unto you, if ye from your hearts forgive not every one his brother their treſpaſſes." "Put on bowels of mercy, kindneſs, humbleneſs of mind, meekneſs, long ſuffering, forbearing one another, forgiving one another; if any man have a quarrel againſt any, even as Chriſt forgave you, ſo alſo do ye." "Be patient towards all men; ſee that none render evil for evil unto any man." "Avenge not yourſelves, but rather give place unto wrath: for it is written, Vengeance is mine, I will repay, ſaith the Lord. Therefore, if thine enemy hunger, feed him; if he thirſt, give him drink; for, in ſo doing, thou ſhalt heap coals of fire on his head. Be not overcome of evil, but overcome evil with good."*

I think it evident, from ſome of theſe paſſages taken ſeparately, and ſtill more ſo from all of them together, that *revenge*, as deſcribed in the beginning of this Chapter, is forbidden in every degree, under all forms, and upon every occaſion. We are likewiſe forbidden to refuſe to an enemy even the moſt imperfect right; "if he hunger, feed him; if he thirſt, give him drink,"† which are examples of imperfect rights. If one who has offended us, ſolicit from us a vote to which his qualifications entitle him, we may not refuſe it from motives of reſentment, or the remembrance of what we have ſuffered at his hands. His right, and our obligation which follows the right, are not altered by his enmity to us, or by ours to him.

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* Matth. vi. 14, 15. xviii. 34, 35. Col. iii. 12, 13. Theſſ. v. 14, 15. Rom. xii. 19, 20, 21.

† See alſo Exodus xxiii. 4. "If thou meet thine enemy's ox, or his aſs, going aſtray, thou ſhalt ſurely bring it back to him again: if thou ſee the aſs of him that hateth thee lying under his burden, and wouldſt forbear to help him, thou ſhalt ſurely help with him."

On the other hand, I do not conceive, that theſe prohibitions were intended to interfere with the puniſhment or proſecution of public offenders. In the eighteenth chapter of St. Matthew, our Saviour tells his diſciples, "If thy brother who has treſpaſſed againſt thee neglect to hear the church, let him be ununto thee as an heathen man, and a publican." Immeiately after this, when St. Peter aſked him, "How oft ſhall my brother ſin againſt me, and I forgive him? till ſeven times?" Chriſt replied, "I ſay not unto thee until ſeven times, but until ſeventy times ſeven;" that is, as often as he repeats the offence. From theſe two adjoining paſſages compared together, we are authorized to conclude that the forgiveneſs of an enemy is not inconſiſtent with the proceeding againſt him as a public offender; and that the diſcipline eſtabliſhed in religious or civil ſocieties, for the reſtraint or puniſhment of criminals, ought to be upheld.

If the magiſtrate be not tied down by theſe prohibitions from the execution of his office, neither is the proſecutor; for the office of the proſecutor is as neceſſary as that of the magiſtrate.

Nor, by parity of reaſon, are private perſons withheld from the correction of vice, when it is in their power to exerciſe it; provided they be aſſured that it is the guilt which provokes them, and not the injury; and that their motives are pure from all mixture and every particle of that ſpirit which delights and triumphs in the humiliation of an adverſary.

Thus, it is no breach of Chriſtian charity, to withdraw our company or civility when the ſame tends to diſcountenance any vicious practice. This is one branch of that extrajudicial diſcipline, which ſupplies the defects and the remiſſneſs of law; and is expreſſly authorized by St. Paul (1 Cor. v. 11.) "But now I have written unto you, not to keep company, if any man, that is called a brother be a fornicator, or covetous, or an idolater, or a railer, or a drunkard, or an extortioner; with ſuch an one no not to eat." The uſe of this aſſociation againſt vice cantinues to be experienced in one remarkable inſtance, and might be extended with good effect to others. The confederacy amongſt women of character, to exclude from their ſociety kept miſtreſſes and proſtitutes, contributes more perhaps to diſcourage that condition of life, and prevents greater numbers from entering into it, than all the conſiderations of prudence and religion put together.

We are likewiſe allowed to practice ſo much caution, as not to put ourſelves in the way of injury, or invite the repetition of it. If a ſervant or tradeſman has cheated us, we are not bound to truſt him again; for this is to encourage him in his diſhoneſt practices, which is doing him much harm.

Where a benefit can be conferred only upon one or few, and the choice of the perſon, upon whom it is conferred, is a proper object of favour, we are at liberty to prefer thoſe who have not offended us to thoſe who have: the contrary being no where required.

Chriſt, who, as hath been well demonſtrated,* eſtimated virtues by their ſolid utility, and not by their faſhion or popularity, prefers this of the forgiveneſs of injuries to every other. He enjoins it oftener; with more earneſtneſs; under a greater variety of forms; and with this weighty and peculiar circumſtance, that the forgiveneſs of others is the condition upon which alone we are to expect, or even aſk, from God, forgiveneſs for ourſelves. And this preference is juſtified by the ſuperior importance of the virtue itſelf. The feuds and animoſities in families and between neighbours, which diſturb the intercourſe of human life, and collectively compoſe half the miſery of it, have their foundation in the want of a forgiving temper; and can never ceaſe, but by the exerciſe of this virtue, on one ſide, or on both.

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* See a View of the Internal Evidence of the Chriſtian Religion.

Chapter IX.

DUELLING.

DUELLING as a puniſhment is abſurd; becauſe it is an equal chance, whether the puniſhment fall upon the offender, or the perſon offended. Nor is it much better as a reparation; it being difficult to explain in what the *ſatisfaction* conſiſts, or how it tends to undo the injury, or to afford a compenſation for the damage already ſuſtained.

The truth is, it is not conſidered as either. A law of honour having annexed the imputation of cowardice to patience under an affront, challenges are given and accepted with no other deſign than to prevent or wipe off this ſuſpicion; without malice againſt the adverſary, generally without a wiſh to deſtroy him, or any other concern than to preſerve the duelliſt's own reputation and reception in the world.

The unreaſonableneſs of this rule of manners is one conſideration; the duty and conduct of individuals, whilſt ſuch a rule exiſts, is another.

As to which, the proper and ſingle queſtion is this, whether a regard for our own reputation is or is not ſufficient to juſtify the taking away the life of another?

Murder is forbidden; and wherever human life is deliberately taken away, otherwiſe than by public authority, there is murder. The value and ſecurity of human life make this rule neceſſary; for I do not ſee what other idea or definition of murder can be admitted, which will not let in ſo much private violence, as to render ſociety a ſcene of peril and bloodſhed.

If unauthorized laws of honour be allowed to create exceptions to divine prohibitions, there is an end of all morality as founded in the will of the Deity; and the obligation of every duty may at one time or other be diſcharged by the caprice and fluctuations of faſhion.

"But a ſenſe of ſhame is ſo much torture; and no relief preſents itſelf otherwiſe than by an attempt upon the life of our adverſary." What then? The diſtreſs which men ſuffer by the want of money is oftentimes extreme, and no reſource can be diſcovered but that of removing a life, which ſtands between the diſtreſſed perſon and his inheritance. The motive in this caſe is as urgent, and the means much the ſame, as in the former: yet this caſe finds no advocate.

Take away the circumſtance of the duelliſt's expoſing his own life, and it becomes aſſaſſination: add this circumſtance, and what difference does it make? None but this, that fewer perhaps will imitate the example, and human life will be ſomewhat more ſafe, when it cannot be attacked without equal danger to the aggreſſor's own. Experience, however, proves that there is fortitude enough in moſt men to undertake this hazard; and were it otherwiſe, the defence, at beſt, would be only that which a highwayman or houſebreaker might plead, whoſe attempt had been ſo daring and deſperate, that few were likely to repeat the ſame.

In expoſtulating with the duelliſt I all along ſuppoſe his adverſary to fall. Which ſuppoſition I am at liberty to make, becauſe, if he have no right to kill his adverſary, he has none to attempt it.

In return, I forbear from applying to the caſe of duelling the Chriſtian principle of the forgiveneſs of injuries; becauſe it is poſſible to ſuppoſe the injury to be forgiven, and the duelliſt to act entirely from a concern for his own reputation: where this is not the caſe, the guilt of duelling is manifeſt, and is greater.

In this view it ſeems unneceſſary to diſtinguiſh between him who gives, and him who accepts a challenge: for, on the one hand, they incur an equal hazard of deſtroying life; and, on the other, both act upon the ſame perſuaſion, that what they do is neceſſary, in order to recover or preſerve the good opinion of the world.

Public opinion is not eaſily controlled by civil inſtitutions: for which reaſon I queſtion whether any regulations can be contrived of ſufficient force to ſuppreſs or change the rule of honour, which ſtigmatizes all ſcruples about duelling with the reproach of cowardice.

The inſufficiency of the redreſs which the law of the land affords, for thoſe injuries which chiefly affect a man in his ſenſibility and reputation, tempts many to redreſs themſelves. Proſecutions for ſuch offences, by the trifling damages that are recovered, ſerve only to make the ſufferer more ridiculous. This ought to be remedied.

For the army, where the point of honour is cultivated with exquiſite attention and refinement, I would eſtabliſh *a Court of Honour*, with a power of awarding thoſe ſubmiſſions and acknowledgments, which it is generally the purpoſe of a challenge to obtain; and it might grow into a faſhion, with perſons of rank of all profeſſions, to refer their quarrels to this tribunal.

Duelling, as the law now ſtands, can ſeldom be overtaken by legal puniſhment. The challenge, appointment, and other previous circumſtances, which indicate the intention with which the combatants met, being ſuppreſſed, nothing appears to a court of juſtice, but the actual rencounter. And if a perſon be ſlain when actually fighting with his adverſary, the law deems his death nothing more than manſlaughter.

Chapter X.

LITIGATION.

"IF it be *poſſible* live peaceably with all men;" which precept contains an indirect confeſſion that this is not always *poſſible.*

The inſtances* in the fifth chapter of St. Matthew are rather to be underſtood as proverbial methods of deſcribing the general duties of forgiveneſs and benevolence, and the temper which we ought to aim at acquiring, than as directions to be ſpecifically obſerved; or of themſelves of any great importance to be obſerved. The firſt of theſe is, "If thine enemy ſmite thee on thy right cheek, turn to him the other alſo;" yet, when one of the officers ſtruck Jeſus with the palm of his hand, we find Jeſus rebuking him for the outrage with becoming indignation: "If I have ſpoken evil, bear witneſs of the evil; but if well, why ſmiteſt thou me?" (John xviii. 22.) It may be obſerved likewiſe, that the ſeveral examples are drawn from inſtances of ſmall and tolerable injuries. A rule which forbade all oppoſition to injury, or defence againſt it, could have no other effect, than to put the good in ſubjection to the bad, and deliver one half of mankind to the depredation of the other half: which muſt be the caſe, ſo long as ſome conſidered themſelves as bound by ſuch a rule, whilſt others deſpiſed it. St. Paul, though no one inculcated forgiveneſs and forbearance with a deeper ſenſe of the value and obligation of theſe virtues, did not interpret either of them to require an unreſiſting ſubmiſſion to every contumely, or a neglect of the means of ſafety and ſelf-defence. He took refuge in the laws of his country, and in the privileges of a *Roman* citizen, from the conſpiracy of the *Jews*, (Acts xxv. 11.) and from the clandeſtine violence of the chief captain. (Acts xxii. 25.) And yet this is the ſame Apoſtle who reproved the litigiouſneſs of his *Corinthian* converts with ſo much ſeverity. "Now, therefore, there is utterly a fault among you, becauſe ye go to law one with another; why do ye not rather take wrong? why do ye not rather ſuffer yourſelves to be defrauded?"

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* "Whoſoever ſhall ſmite thee on thy right cheek, turn to him the other alſo; and if any man will ſue thee at the law, and take away thy coat, let him have thy cloak alſo; and whoſoever ſhall compel thee to go a mile, go with him twain."

On the one hand, therefore, Chriſtianity excludes all vindictive motives, and all frivolous cauſes of proſecution; ſo that where the injury is ſmall, where no good purpoſe of public example is anſwered, where forbearance is not likely to invite a repetition of the injury, or where the expenſe of an action becomes a puniſhment too ſevere for the offence; there the Chriſtian is withholden by the authority of his religion from going to law.

On the other hand, a law-ſuit is inconſiſtent with no rule of the Goſpel, when it is inſtituted,

1. For the eſtabliſhing of ſome important right.

2. For the procuring a compenſation for ſome conſiderable damage.

3. For the preventing of future injury.

But ſince it is ſuppoſed to be undertaken ſimply with a view to the ends of juſtice and ſafety, the proſecutor of the action is bound to confine himſelf to the cheapeſt proceſs which will accompliſh theſe ends, as well as to conſent to any peaceable expedient for the ſame purpoſe; as to *a reference*, in which the arbitrators can do, what the law cannot, divide the damage, when the fault is mutual; or to *a compounding of the diſpute*, by accepting a compenſation in the groſs, without entering into articles and items, which it is often very difficult to adjuſt ſeparately.

As to the reſt, the duty of the contending parties may be expreſſed in the following directions:

Not by appeals to prolong a ſuit againſt your own conviction.

Not to undertake or defend a ſuit againſt a poor adverſary, or render it more dilatory or expenſive than neceſſary, with a hope of intimidating or wearying him out by the expenſe.

Not to influence *evidence* by authority or expectation.

Nor to ſtifle any in your poſſeſſion, although it make againſt you.

Hitherto we have treated of civil actions. In criminal proſecutions the private injury ſhould be forgotten, and the proſecutor proceed with the ſame temper, and upon the ſame motives, as the magiſtrate; the one being a neceſſary miniſter of juſtice as well as the other, and both bound to direct their conduct by a diſpaſſionate care of the public welfare.

In whatever degree the puniſhment of an offender is conducive, or his eſcape dangerous, to the intereſt of the community, in the ſame degree is the party againſt whom the crime was committed bound to proſecute, becauſe ſuch proſecutions muſt in their nature originate from the ſufferer.

Therefore, great public crimes, as robberies, forgeries, and the like, ought not to be ſpared, from an apprehenſion of trouble or expenſe in carrying on the proſecution, from falſe ſhame, or miſplaced compaſſion.

There are many offences, ſuch as nuiſances, neglect of public roads, foreſtalling, engroſſing, ſmuggling, ſabbath-breaking, profaneneſs, drunkenneſs, proſtitution, the keeping of lewd or diſorderly houſes, the writing, publiſhing, or expoſing to ſale laſcivious books or pictures, with ſome others, the proſecution of which being of equal concern to the whole neighbourhood, cannot be charged as a peculiar obligation upon any.

Nevertheleſs, there is great merit in the perſon who undertakes ſuch proſecutions upon proper motives ; which amounts to the ſame thing.

The character of an *informer* is in this country undeſervedly odious. But where any public advantage is likely to be attained by informations, or other activity in promoting the execution of the laws, a good man will deſpiſe a prejudice founded in no juſt reaſon, or will acquit himſelf of the imputation of intereſted deſigns by giving away his ſhare of the penalty.

On the other hand, proſecutions for the ſake of the reward or for the gratification of private enmity, where the offence produces no public miſchief, or where it ariſes from ignorance or inadvertency, are reprobated under the general deſcription of *applying a rule of law to a purpoſe for which it was not intended.* Under which deſcription may be ranked an officious revival of the laws againſt popiſh prieſts, and diſſenting teachers.

Chapter XI.

GRATITUDE.

EXAMPLES of ingratitude check and diſcourage voluntary beneficence : and in this the miſchief of ingratitude conſiſts. Nor is the miſchief ſmall ; for after all is done that can be done, towards providing for the public happineſs, by preſcribing rules of juſtice, and enforcing the obſervation of them by penalties or compulſion, much muſt be left to thoſe offices of kindneſs, which men remain at liberty to exert or withhold. Now not only the choice of the objects, but the quantity and even the exiſtence of this ſort of kindneſs in the world, depends, in a great meaſure, upon the return which it receives; and this is a conſideration of general importance.

A ſecond reaſon for cultivating a grateful temper in ourſelves is the following. The ſame principle, which is touched with the kindneſs of a human benefactor, is capable of being affected by the divine goodneſs, and of becoming, under the influence of that affection, a ſource of the pureſt and moſt exalted virtue. The love of God is the ſublimeſt gratitude. It is a miſtake, therefore, to imagine that this virtue is omitted in the Chriſtian ſcriptures; for every precept, which commands us "to love God, becauſe he firſt loved us," preſuppoſes the principle of gratitude, and directs it to its proper object.

It is impoſſible to particularize the ſeveral expreſſions of gratitude, in as much as they vary with the character and ſituation of the benefactor, and with the opportunities of the perſon obliged; which variety admits of no bounds.

It may be obſerved, however, that gratitude can never oblige a man to do what is wrong, and what by conſequence he is previouſly obliged not to do. It is no ingratitude to refuſe to do, what we cannot reconcile to any apprehenſions of our duty; but it is ingratitude and hypocriſy together, to pretend this reaſon, when it is not the real one: and the frequency of ſuch pretences has brought this apology for non-compliance with the will of a benefactor into unmerited diſgrace.

It has long been accounted a violation of delicacy and generoſity to upbraid men with the favours they have received; but it argues a total deſtitution of both theſe qualities, as well as of moral probity, to take advantage of that aſcendency, which the conferring of benefits juſtly creates, to draw or drive thoſe whom we have obliged into mean or diſhoneſt compliances.

Chapter XII.

SLANDER.

SPEAKING is acting, both in philoſophical ſtrictneſs, and as to all moral purpoſes; for, if the miſchief and motive of our conduct be the ſame, the means which we uſe make no difference.

And this is in effect what our Saviour declares, *Matt.* xii. 37. "By thy words thou ſhalt be juſtified, and by thy words thou ſhalt be condemned:" by thy words, as well, that is, as by thy actions; the one ſhall be taken into the account as well as the other, for they both poſſeſs the ſame property of voluntarily producing good or evil.

Slander may be diſtinguiſhed into two kinds, *malicious* ſlander, and *inconſiderate* ſlander.

Malicious ſlander, is the relating of either truth or falſehood, for the purpoſe of creating miſery.

I acknowledge that the truth or falſehood of what is related varies the degree of guilt conſiderably; and that ſlander, in the ordinary acceptation of the term, ſignifies the circulation of miſchievous *falſehoods*: but truth may be made inſtrumental to the ſucceſs of malicious deſigns as well as falſehood; and if the end be bad, the means cannot be innocent.

I think the idea of ſlander ought to be confined to the production of *gratuitous* miſchief. When we have an end or intereſt of our own to ſerve, if we attempt to compaſs it by falſehood, it is *fraud*; if by a publication of the truth, it is not without ſome additional circumſtance of breach of promiſe, betraying of confidence, or the like, to be deemed criminal.

Sometimes the pain is intended for the perſon to whom we are ſpeaking; at other times an enmity is to be gratified by the prejudice or diſquiet of a third perſon. To infuſe ſuſpicions, to kindle or continue diſputes, to avert the favour and eſteem of benefactors from their dependants, to render ſome one whom we diſlike contemptible or obnoxious in the public opinion, are all offices of ſlander; of which the guilt muſt be meaſured by the intenſity and extent of the miſery produced.

The diſguiſes under which ſlander is conveyed, whether in a whiſper, with injunctions of ſecrecy, by way of caution, or with affected reluctance, are all ſo many aggravations of the offence, as they indicate more deliberation and deſign.

Inconſiderate ſlander is a different offence, although the ſame miſchief actually follow, and although the miſchief might have been foreſeen. The not being conſcious of that deſign, which we have hitherto attributed to the ſlanderer, makes the difference.

The guilt here conſiſts in the want of that regard to the conſequences of our conduct, which a juſt affection for human happineſs, and concern for our duty, would not have failed to have produced in us. And it is no anſwer to this crimination to ſay, that we entertained no evil *deſign*. A ſervant may be a very bad ſervant, and yet ſeldom or never *deſign* to act in oppoſition to his maſter's intereſt or will; and his maſter may juſtly puniſh ſuch a ſervant for a thoughtleſſneſs and neglect nearly as prejudicial as deliberate diſobedience. I accuſe you not, he may ſay, of any expreſs intention to hurt me; but had not the fear of my diſpleaſure, the care of my intereſt, and indeed all the qualities which conſtitute the merit of a good ſervant, been wanting in you, they would not only have excluded every direct purpoſe of giving me uneaſineſs, but have been ſo far preſent to your thoughts, as to have checked that unguarded licentiouſneſs, by which I have ſuffered ſo much, and inſpired you in its place with an habitual ſolicitude about the effects and tendency of what you did or ſaid. This very much reſembles the caſe of all ſins of inconſideration; and, amongſt the foremoſt of theſe, that of inconſiderate ſlander.

Information communicated for the real purpoſe of warning, or cautioning, is not ſlander.

Indiſcriminate praiſe is the oppoſite of ſlander, but it is the oppoſite extreme; and, however it may affect to be thought exceſs of candour, is commonly the effuſion of a frivolous underſtanding, or proceeds from a ſettled contempt of all moral diſtinctions.

BOOK III.

Relative Duties.

PART III.

OF RELATIVE DUTIES WHICH RESULT FROM THE CONSTITUTION OF THE SEXES.

THE conſtitution of the ſexes is the foundation of *marriage.*

Collateral to the ſubject of marriage, are fornication, ſeduction, adultery, inceſt, polygamy, divorce.

Conſequential to marriage, is the relation and reciprocal duty of parent and child.

We will treat of theſe ſubjects in the following order: firſt, of the public uſe of marriage inſtitutions; ſecondly, of the ſubjects collateral to marriage, in the order in which we have here propoſed them; thirdly, of marriage itſelf; and laſtly, of the relation and reciprocal duties of parents and children.

Chapter I.

OF THE PUBLIC USE OF MARRIAGE INSTITUTIONS.

THE public uſe of marriage inſtitutions conſiſts in their promoting the following beneficial effects:

1. The private comfort of individuals, eſpecially of the female ſex. It may be true, that all are not intereſted in this reaſon: nevertheleſs, it is a reaſon to all for abſtaining from any conduct which tends in its general conſequence to obſtruct marriage; for whatever promotes the happineſs of the majority is binding upon the whole.

2. The production of the greateſt number of healthy children, their better education, and the making of due proviſion for their ſettlement in life.

3. The peace of human ſociety, in cutting off a principal ſource of contention, by aſſigning one or more women to one man, and protecting his excluſive right by ſanctions of morality and law.

4. The better government of ſociety, by diſtributing the community into ſeparate families, and appointing over each the authority of a maſter of a family, which has more actual influence than all civil authority put together.

5. The ſame end, in the additional ſecurity which the ſtate receives for the good behaviour of its citizens, from the ſolicitude they feel for the welfare of their children, and from their being confined to permanent habitations.

6. The encouragement of induſtry.

Some ancient nations appear to have been more ſenſible of the importance of marriage inſtitutions than we are. The Spartans obliged their citizens to marry by penalties, and the Romans encouraged theirs by the *jus trium liberorum.* A man who had no child was entitled by the Roman law only to one half of any legacy that ſhould be left him, that is, at the moſt, could only receive one half of the teſtator's fortune.

Chapter II.

FORNICATION.

THE firſt and great miſchief, and by conſequence the guilt, of promiſcuous concubinage, conſiſts in its tendency to diminiſh marriages, and thereby to defeat the ſeveral beneficial purpoſes enumerated in the preceding Chapter.

Promiſcuous concubinage diſcourages marriage by abating the chief temptation to it. The male part of the ſpecies will not undertake the incumbrance, expenſe, and reſtraint of married life, if they can gratify their paſſions at a cheaper price: and they will undertake any thing, rather than not gratify them.

The reader will learn to comprehend the magnitude of this miſchief, by attending to the importance and variety of the uſes to which marriage is ſubſervient; and by recollecting withal, that the malignity and moral quality of each crime is not to be eſtimated by the particular effect of one offence, or of one perſon's offending, but by the general tendency and conſequence of crimes of the ſame nature. The libertine may not be conſcious that theſe irregularities hinder his own marriage, from which he is deterred, he may allege, by different conſiderations; much leſs does he perceive how *his* indulgences can hinder other men from marrying: but what will he ſay would be the conſequence, if the ſame licentiouſneſs were univerſal? or what ſhould hinder its becoming univerſal, if it be innocent or allowable in him?

2. Fornication ſuppoſes proſtitution; and proſtitution brings and leaves the victims of it to almoſt certain miſery. It is no ſmall quantity of miſery in the aggregate, which, between want, diſeaſe, and inſult, is ſuffered by thoſe outcaſts of human ſociety,

who infeſt populous cities; the whole of which is a *general conſequence* of fornication, and to the increaſe and continuance of which, every act and inſtance of fornication contributes.

3. Fornication produces habits of ungovernable lewdneſs, which introduce the more aggravated crimes of ſeduction, adultery, violation, &c.* Likewiſe, however it be accounted for, the criminal commerce of the ſexes corrupts and depraves the mind and moral character more than any ſingle ſpecies of vice whatſoever. That ready perception of guilt, that prompt and deciſive reſolution againſt it, which conſtitutes a virtuous character, is ſeldom found in perſons addicted to theſe indulgences. They prepare an eaſy admiſſion for every ſin that ſeeks it; are, in low life, uſually the firſt ſtage in men's progreſs to the moſt deſperate villanies; and, in high life, to that lamented diſſoluteneſs of principle, which manifeſts itſelf in a profligacy of public conduct, and a contempt of the obligations of religion and of moral probity. Add to this, that habits of libertiniſm incapacitate and indiſpoſe the mind for all intellectual, moral, and religious pleaſures; which is a great loſs to any man's happineſs.

4. Fornication perpetuates a diſeaſe, which may be accounted one of the soreſt maladies of human nature; and the effects of which are ſaid to viſit the conſtitution of even diſtant generations.

The paſſion being natural proves that it was intended to be gratified; but under what reſtrictions, or whether without any, muſt be collected from different conſiderations.

The Chriſtian ſcriptures condemn fornication abſolutely and peremptorily. "Out of the heart," ſays our Saviour, "proceed evil thoughts, murders, adulteries, *fornication*, thefts, falſe witneſs, blaſphemies; theſe are the things which defile a man." Theſe are Chriſt's own words; and one word from him upon the ſubject is final. It may be obſerved with what ſociety fornication is claſſed; with murders, thefts, falſe witneſs, blaſphemies. I do not mean that theſe crimes are all equal, becauſe they are all mentioned together; but it proves that they are all crimes. The Apoſtles are more full upon this topic. One well-known paſſage in the Epiſtle to the Hebrews may ſtand in the place of all others; becauſe, admitting the authority by which the Apoſtles of Chriſt ſpake and wrote, it is deciſive: "Marriage and the bed undefiled is honourable amongſt all men, but whore-mongers and adulterers God will judge;" which was a great deal to ſay, at a time when it was not agreed even amongſt philoſophers themſelves that fornication was a crime.

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* Of this paſſion it has been truly ſaid, "that irregularity has no limits; that one exceſs draws on another; that the moſt eaſy, therefore, as well as the moſt excellent way of being virtuous, is to be ſo entirely.". Ogden, Sermon xvi.

The ſcriptures give no ſanction to thoſe auſterities, which have been ſince impoſed upon the world under the name of Chriſt's religion, as the celibacy of the clergy, the praiſe of perpetual virginity, the *prohibitio concubitûs cum gravidâ uxore;* but, with a juſt knowledge of, and regard to the condition and intereſt of the human ſpecies, have provided, in the marriage of one man with one woman, an adequate gratification for the propenſities of their nature, and have *reſtricted* them to that gratification.

The avowed toleration, and in ſome countries the licenſing, taxing, and regulating of public brothels, has appeared to the people an authorizing of fornication; and has contributed, with other cauſes, ſo far to vitiate the public opinion, that there is no practice of which the immorality is ſo little thought of or acknowledged, although there are few, in which it can more plainly be made out. The legiſlators who have patronized receptacles of proſtitution ought to have foreſeen this effect, as well as conſidered, that whatever facilitates fornication diminiſhes marriages. And as to the uſual apology for this relaxed diſcipline, the danger of greater enormities if acceſs to proſtitutes were too ſtrictly watched and prohibited, it will be time enough to look to that, when the laws and the magiſtrates have done their utmoſt. The greateſt vigilance of both will do no more, than oppoſe ſome bounds and ſome difficulties to this intercourſe. And, after all, theſe pretended fears are without foundation in experience. The men are in all reſpects the moſt virtuous, in countries where the women are moſt chaſte.

There is a ſpecies of cohabitation, diſtinguiſhable, no doubt, from vagrant concubinage, and which, by reaſon of its reſemblance to marriage, may be thought to participate of the ſanctity and innocence of that eſtate; I mean the caſe of *kept miſtreſſes*, under the favourable circumſtance of mutual fidelity. This caſe I have heard defended by ſome ſuch apology as the following:

"That the marriage rite being different in different countries, and in the ſame country amongſt different ſects, and with ſome ſcarce any thing; and, moreover, not being preſcribed or even mentioned in ſcripture, can be accounted of only as of a form and ceremony of human invention: that, conſequently, if a man and woman betroth and confine themſelves to each other, their intercourſe muſt be the ſame, as to all moral purpoſes, as if they were legally married: for the addition or omiſſion of that which is a mere form and ceremony, can make no difference in the ſight of God, or in the actual nature of right and wrong."

To all which it may be replied,

1. If the ſituation of the parties be the ſame thing as marriage, why do they not marry?

2. If the man chooſe to have it in his power to diſmiſs the woman at his pleaſure, or to retain her in a ſtate of humiliation and dependence inconſiſtent with the rights which marriage would confer upon her, it is not the ſame thing.

It is not at any rate the ſame thing to the children.

Again, as to the marriage rite being a mere form, and that alſo variable, the ſame may be ſaid of ſigning and ſealing, of bonds, wills, deeds of conveyance, and the like, which yet make a great difference in the rights and obligations of the parties concerned in them.

And with reſpect to the rite not being appointed in ſcripture—the ſcriptures forbid fornication, that is, cohabitation without marriage, leaving it to the law of each country to pronounce what is, or what makes, a marriage ; in like manner as they forbid thefts, that is, the taking away of another's property, leaving it to the municipal law to fix what makes the thing property, or whoſe it is, which alſo, as well as marriage, depends upon arbitrary and mutable forms.

Laying aſide the injunctions of ſcripture, the plain account of the queſtion ſeems to be this : It is immoral, becauſe it is pernicious, that men and women ſhould cohabit, without undertaking certain irrevocable obligations, and mutually conferring certain civil rights ; if, therefore, the law has annexed theſe rights and obligations to certain forms, ſo that they cannot be ſecured or undertaken by any other means, which is the caſe here (for whatever the parties may promiſe to each other, nothing but the marriage ceremony can make their promiſe irrevocable) it becomes in the ſame degree immoral, that men and women ſhould cohabit without the interpoſition of theſe forms.

If fornication be criminal, all thoſe incentives which lead to it are acceſſaries to the crime, as laſcivious converſation, whether expreſſed in obſcene or diſguiſed under modeſt phraſes ; alſo wanton ſongs, pictures, books ; the writing, publiſhing, and circulating of which, whether out of frolic, or for ſome pitiful profit, is productive of ſo extenſive a miſchief from ſo mean a temptation, that few crimes, within the reach of private wickedneſs, have more to anſwer for, or leſs to plead in their excuſe.

Indecent converſation, and by parity of reaſon all the reſt, are forbidden by St. Paul, Eph. iv. 29. "Let no corrupt communication proceed out of your mouth:" And again, Col. iii. 8. "Put off—filthy communication out of your mouth."

The invitation, or voluntary admiſſion, of impure thoughts, or the ſuffering them to get poſſeſſion of the imagination, falls within the ſame deſcription, and is condemned by *Chriſt*, Matt. v. 28. "Whoſoever looketh on a woman to luſt after her, hath committed adultery with her already in his heart." *Chriſt*, by thus enjoining a regulation of the thoughts, ſtrikes at the root of the evil.

Chapter III.

SEDUCTION.

THE *ſeducer* practiſes the ſame ſtratagems to draw a woman's perſon into his power, that a *ſwindler* does, to get poſſeſſion of your goods, or money; yet the *law of honour*, which abhors deceit, applauds the addreſs of a ſucceſsful intrigue: ſo much is this capricious rule guided by names, and with ſuch facility does it accommodate itſelf to the pleaſures and conveniency of higher life!

Seduction is ſeldom accompliſhed without fraud; and the fraud is by ſo much more criminal than other frauds, as the injury effected by it is greater, continues longer, and leſs admits of reparation.

This injury is threefold; to the woman, to her family, and to the public.

1. The injury to the woman is made up, of the *pain* ſhe ſuffers from ſhame, of the *loſs* ſhe ſuſtains in

her reputation and proſpects of marriage, and of the *depravation of her moral principle.*

This *pain* muſt be extreme, if we may judge of it from thoſe barbarous endeavours to conceal their diſgrace, to which women, under ſuch circumſtances, ſometimes have recourſe; comparing alſo this barbarity with their paſſionate fondneſs for their offſpring in other caſes. Nothing but an agony of mind the moſt inſupportable can induce a woman to forget her nature, and the pity which even a ſtranger would ſhew to a helpleſs and imploring infant. It is true, that all are not urged to this extremity; but if any are, it affords an indication of how much all ſuffer from the ſame cauſe. What ſhall we ſay to the authors of ſuch miſchief?

The *loſs* which a woman ſuſtains by the ruin of her reputation almoſt exceeds computation. Every perſon's happineſs depends in part upon the reſpect and reception which they meet with in the world; and it is no inconſiderable mortification even to the firmeſt tempers, to be rejected from the ſociety of their equals, or received there with neglect and diſdain. But this is not all, nor the worſt. By a rule of life, which it is not eaſy to blame, and which it is impoſſible to alter, a woman loſes with her chaſtity the chance of marrying at all, or in any manner equal to the hopes ſhe had been accuſtomed to entertain. Now marriage, whatever it be to a man, is that, from which every woman expects her chief happineſs. And this is ſtill more true in low life, of which condition the women are, who are moſt expoſed to ſolicitations of this ſort. Add to this, that where a woman's maintenance depends upon her character, (as it does, in a great meaſure, with thoſe who are to ſupport themſelves by ſervice) little ſometimes is left to the forſaken ſufferer, but to ſtarve for want of employment, or to have recourſe to proſtitution for food and raiment.

As a woman collects her virtue into this point, the loſs of her chaſtity is generally the *deſtruction of her moral principle;* and this conſequence is to be apprehended, whether the criminal intercourſe be diſcovered or not.

2. The injury to the family may be underſtood by the application of that infallible rule, "of doing to others what *we would* that others ſhould do unto us." Let a father or a brother ſay, for what conſideration they would ſuffer this injury in a daughter or a ſiſter; and whether any, or even a total loſs of fortune could create equal affliction and diſtreſs. And when they reflect upon this, let them diſtinguiſh, if they can, between a robbery committed upon their property by fraud or forgery, and the ruin of their happineſs by the treachery of a ſeducer.

3. The public at large loſe the benefit of the woman's ſervice in her proper place and deſtination, as a wife and parent. This to the whole community may be little; but it is often more than all the good, which the ſeducer does to the community, can recompenſe. Moreover, proſtitution is ſupplied by ſeduction; and in proportion to the danger there is of the woman's betaking herſelf, after her firſt ſacrifice, to a life of public lewdneſs, the ſeducer is anſwerable for the multiplied evils to which his crime gives birth.

Upon the whole, if we purſue the effects of ſeduction through the complicated miſery which it occaſions; and if it be right to eſtimate crimes by the miſchief they knowingly produce, it will appear ſomething more than mere invective to aſſert, that not one half of the crimes, for which men ſuffer death by the laws of England, are ſo flagitious as this.*

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* Yet the law has provided no puniſhment for this offence beyond a pecuniary ſatisfaction to the injured family; and this can only be come at, by one of the quainteſt fictions in the world, by the father's bringing his action againſt the ſeducer, for the loſs of his daughter's ſervice, during her pregnancy and nurturing.

Chapter IV.

ADULTERY.

A NEW ſufferer is introduced, the injured huſband, who receives a wound in his ſenſibility and affections, the moſt painful and incurable that human nature knows. In all other reſpects, adultery on the part of the man who ſolicits the chaſtity of a married woman, includes the crime of ſeduction, and is attended with the ſame miſchief.

The infidelity of the woman is aggravated by cruelty to her children, who are generally involved in their parents' ſhame, and always made unhappy by their quarrel.

If it be ſaid that theſe conſequences are chargeable not ſo much upon the crime, as the diſcovery, we anſwer, firſt, that the crime could not be diſcovered unleſs it were committed, and that the commiſſion is never ſecure from diſcovery; and ſecondly, that if we excuſe adulterous connexions, whenever they can hope to eſcape detection, which is the concluſion to which this argument conducts us, we leave the huſband no other ſecurity for his wife's chaſtity, than in her want of opportunity or temptation; which would probably either deter men from marrying, or render marriage a ſtate of ſuch jealouſy and alarm to the huſband, as muſt end in the ſlavery and confinement of the wife.

The vow by which married perſons mutually engage their fidelity, is "witneſſed before God," and accompanied with circumſtances of ſolemnity and religion, which approach to the nature of an oath. The married offender therefore incurs a crime little ſhort of perjury, and the ſeduction of a married woman is little leſs than ſubornation of perjury;—and this guilt is independent of the diſcovery.

All behaviour, which is deſigned, or which knowingly tends to captivate the affection of a married woman, is a barbarous intruſion upon the peace and virtue of a family, though it fall ſhort of adultery.

The uſual and only apology for adultery is the prior tranſgreſſion of the other party. There are degrees no doubt in this, as in other crimes; and ſo far as the bad effects of adultery are anticipated by the conduct of the huſband or wife who offends firſt, the guilt of the ſecond offender is leſs. But this falls very far ſhort of a juſtification; unleſs it could be ſhewn that the obligation of the marriage vow depends upon the condition of reciprocal fidelity; for which conſtruction, there appears no foundation, either in expediency, or in the terms of the promiſe, or in the deſign of the legiſlature which preſcribed the marriage rite. Moreover, the rule contended for by this plea has a manifeſt tendency to multiply the offence, but none to reclaim the offender.

The way of conſidering the offence of one party as a *provocation* to the other, and the other as only *retaliating* the injury by repeating the crime, is a childiſh trifling with words.

"Thou ſhalt not commit adultery," was an interdict delivered by God himſelf. By the Jewiſh law adultery was capital to both parties in the crime: "Even he that committeth adultery with his neighbour's wife, the adulterer and adultereſs ſhall ſurely be put to death." Lev. xx. 10. Which paſſages prove, that the divine Legiſlator placed a great difference between adultery and fornication. And with this agree the Chriſtian ſcriptures; for in almoſt all the catalogues they have left us of crimes and criminals, they enumerate "fornication, adultery," "whoremongers, adulterers," (Matthew xv. 19. 1 Cor. vi. 9. Gal. v. 9. Heb. xiii. 4.) by which mention of both, they ſhew that they did not conſider them as the ſame; but that the crime of adultery was, in their apprehenſion, diſtinct from, and accumulated upon, that of fornication.

The hiſtory of the woman taken in adultery, recorded in the eighth chapter of *St. John's Goſpel*, has been thought by ſome to give countenance to that crime. As Chriſt told the woman, "Neither do I *condemn* thee," we muſt believe, it is ſaid, that he deemed her conduct either not criminal, or not a crime however of the heinous nature which we repreſent it to be. A more attentive examination of the caſe will, I think, convince us, that from *it* nothing can be concluded as to Chriſt's opinion concerning adultery, either one way or the other. The tranſaction is thus related: "Early in the morning Jeſus came again into the temple, and all the people came unto him; and he ſat down and taught them; and the Scribes and Phariſees brought unto him a woman taken in adultery; and when they had ſet her in the midſt, they ſay unto him, Maſter, this woman was taken in adultery, in the very act: now Moſes in the law commanded that ſuch ſhould be ſtoned; but what ſayeſt thou? This they ſaid tempting him, that they might have to accuſe him. But Jeſus ſtooped down, and with his finger wrote on the ground, as though he heard them not. So when they continued aſking him, he lift up himſelf, and ſaid unto them, He that is without ſin amongſt you, let him firſt caſt a ſtone at her; and again he ſtooped down and wrote on the ground: and they which heard it, being convicted by their own conſcience, went out one by one, beginning at the eldeſt, even unto the laſt; and Jeſus was left alone, and the woman ſtanding in the midſt. When Jeſus had lift up himſelf and ſaw none but the woman, he ſaid unto her, Woman, where are thoſe thine accuſers? hath no man condemned thee? She ſaid unto him, No man, Lord. And he ſaid unto her, *Neither do I condemn thee*; go and ſin no more."

"This they ſaid, tempting him, that they might have to accuſe him," to draw him, that is, into an exerciſe of judicial authority, that they might have to accuſe him before the Roman governor of uſurping or intermeddling with the civil government. This was their deſign; and Chriſt's behaviour throughout the whole affair proceeded from a knowledge of this deſign, and a determination to defeat it. He gives them at firſt a cold and ſullen reception, well ſuited to the inſidious intention with which they came: "He ſtooped down, and with his finger wrote on the ground, as though he heard them not." "When they *continued* aſking him," when they teaſed him to ſpeak, he diſmiſſed them with a rebuke, which the impertinent malice of their errand, as well as the ſecret character of many of them deſerved: "He that is without ſin (that is, this ſin) among you, let him firſt caſt a ſtone at her." This had its effect. Stung with the reproof, and diſappointed of their aim, they ſtole away one by one, and left Jeſus and the woman alone. And then follows the converſation, which is the part of the narrative moſt material to our preſent ſubject. "Jeſus ſaith unto her, Woman, where are thoſe thine accuſers? hath no man condemned thee? She ſaid, No man, Lord. And Jeſus ſaid unto her, Neither do I condemn thee; go and ſin no more." Now, when Chriſt aſked the woman, "hath no man *condemned* thee," he certainly ſpoke, and was underſtood by the woman to ſpeak, of a legal and judicial condemnation; otherwiſe, her anſwer, "no man, Lord," was not true. In every other ſenſe of condemnation, as blame, cenſure, reproof, private judgment, and the like, many had condemned her; all thoſe indeed who brought her to Jeſus. If then a judicial ſentence was what Chriſt meant by *condemning* in the queſtion, the common uſe of language requires us to ſuppoſe that he meant the ſame in his reply, "neither do I condemn thee," *i. e.* I pretend to no judicial character or authority over thee; it is no office or buſineſs of mine to pronounce or execute the ſentence of the law.

When Chriſt adds, "go and ſin no more," he in effect tells her, that ſhe had ſinned already; but as to the degree or quality of the ſin, or Chriſt's opinion concerning it, nothing is declared, or can be inferred, either way.

Adultery, which was puniſhed with death during the Uſurpation, is now regarded by the law of England only as a civil injury; for which the imperfect ſatisfaction that money can afford, may be recovered by the huſband.

Chapter V.

INCEST.

IN order to preſerve chaſtity in families, and between perſons of different ſexes brought up and living together in a ſtate of unreſerved intimacy, it is neceſſary by every method poſſible to inculcate an abhorrence of inceſtuous conjunctions; which abhorrence can only be upheld by the abſolute reprobation of *all* commerce of the ſexes between near relations. Upon this principle, the *marriage* as well as other cohabitation of brothers and ſiſters, of lineal kindred, and of all who uſually live in the ſame family, may be ſaid to be forbidden by the law of nature.

Reſtrictions which extend to remoter degrees of kindred than what this reaſon makes it neceſſary to prohibit from intermarriage, are founded in the authority of the poſitive law which ordains them, and can only be juſtified by their tendency to diffuſe wealth, to connect families, or to promote ſome political advantage.

The *Levitical* law, which is received in this country, and from which the rule of the *Roman* law differs very little, prohibits* marriage between relations within *three* degrees of kindred; computing the generations not from but through the common anceſtor, and accounting affinity the ſame as conſanguinity. The iſſue, however, of ſuch marriages are not baſtardized, unleſs the parents be divorced during their lifetime.

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* The *Roman* law continued the prohibition to the deſcendants of brothers and ſiſters without limits. In the *Levitical* and *Engliſh* law, there is nothing to hinder a man from marrying his *great* niece.

The *Egyptians* are ſaid to have allowed of the marriage of brothers and ſiſters. Amongſt the *Athenians* a very ſingular regulation prevailed; brothers and ſiſters of the half blood, if related by the father's ſide, might marry; if by the mother's ſide, they were prohibited from marrying. The ſame cuſtom alſo probably obtained in Chaldea ſo early as the age in which Abraham left it; for he and Sarah his wife ſtood in this relation to each other. "And yet, indeed, ſhe is my ſiſter, ſhe is the daughter of my father, but not of my mother, and ſhe became my wife." Gen. xx. 12.

Chapter VI.

POLYGAMY.

THE equality* in the number of males and females born into the world intimates the intention of God, that one woman ſhould be aſſigned to one man; for, if to one man be allowed an excluſive right to five or more women, four or more men muſt be deprived of the excluſive poſſeſſion of any: which could never be the order intended.

It ſeems alſo a ſignificant indication of the divine will, that he at firſt created only one woman to one man. Had God intended polygamy for the ſpecies, it is probable he would have begun with it; eſpecially as, by giving to Adam more wives than one, the multiplication of the human race would have proceeded with a quicker progreſs.

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* This equality is not exact. The number of male infants exceeds that of females in the proportion of nineteen to eighteen, or thereabouts; which exceſs provides for the greater conſumption of males by war, ſeafaring and other dangerous or unhealthy occupations.

Polygamy not only violates the conſtitution of nature, and the apparent deſign of the Deity, but produces to the parties themſelves, and to the public, the following bad effects: conteſts and jealouſies amongſt the wives of the ſame huſband; diſtracted affections, or the loſs of all affection in the huſband himſelf; a voluptuouſneſs in the rich which diſſolves the vigour of their intellectual as well as active faculties, producing that indolence and imbecility both of mind and body, which have long characterized the nations of the Eaſt; the abaſement of one half of the human ſpecies, who, in countries where polygamy obtains, are degraded into mere inſtruments of phyſical pleaſure to the other half; neglect of children; and the manifold, and ſometimes unnatural miſchiefs, which ariſe from a ſcarcity of women. To compenſate for theſe evils, polygamy does not offer a ſingle advantage. In the article of population, which it has been thought to promote, the community gain nothing:* for the queſtion is not, whether one man will have more children by five or more wives than by one; but whether theſe five wives would not bear the ſame, or a greater number of children, to five ſeparate huſbands. And as to the care of the children when produced, and the ſending of them into the world in ſituations in which they may be likely to form and bring up families of their own, upon which the increaſe and ſucceſſion of the human ſpecies in a great degree depend; this is leſs provided for, and leſs practicable, where twenty or thirty children are to be ſupported by the attention and fortunes of one father, than if they were divided into five or ſix families, to each of which were aſſigned the induſtry and inheritance of two parents.

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* Nothing, I mean, compared with a ſtate in which marriage is nearly univerſal. Where marriages are leſs general, and many women unfruitful from the want of huſbands, polygamy might at firſt add a little to population; and but a little: for, as a variety of wives would be ſought chiefly from temptations of voluptuouſneſs, it would rather increaſe the demand for female beauty, than for the ſex at large. And this *little* would ſoon be made leſs by many deductions. For, firſt, as none but the opulent can maintain a plurality of wives, where polygamy obtains, the rich indulge in it, while the reſt take up with a vague and barren incontinency. And, ſecondly, women would grow leſs jealous of their virtue, when they had nothing for which to reſerve it, but a chamber in the *haram;* when their chaſtity was no longer to be rewarded with the rights and happineſs of a wife, as enjoyed under the marriage of one woman to one man. Theſe conſiderations may be added to what is mentioned in the text, concerning the eaſy and early ſettlement of children in the world.

Whether ſimultaneous polygamy was permitted by the law of *Moſes*, ſeems doubtful:* but whether permitted or not, it was certainly practiſed by the *Jewiſh* patriarchs, both before that law, and under it. The permiſſion, if there was any, might be like that of divorce, "for the hardneſs of their heart," in condeſcenſion to their eſtabliſhed indulgencies, rather than from the general rectitude or propriety of the thing itſelf. The ſtate of manners in *Judea* had probably undergone a reformation in this reſpect before the time of *Chriſt*, for in the New Teſtament we meet with no trace or mention of any ſuch practice being tolerated.

For which reaſon, and becauſe it was likewiſe forbidden amongſt the Greeks and Romans, we cannot expect to find any expreſs law upon the ſubject in the Chriſtian code. The words of Chriſt,‡ Matt. xix. 9. may be conſtrued by an eaſy implication to prohibit polygamy; for, if "whoever putteth away his wife, and *marrieth* another, committeth adultery," he who marrieth another *without* putting away the firſt is no leſs guilty of adultery; becauſe the adultery does not conſiſt in the repudiation of the firſt wife (for, however unjuſt or cruel that may be, it is not adultery) but in entering into a ſecond marriage during the legal exiſtence and obligation of the firſt. The ſeveral paſſages in *St. Paul*'s writings, which ſpeak of marriage, always ſuppoſe it to ſignify the union of one man with one woman. Upon this ſuppoſition he argues, Rom. vii. 2. 3. "Know ye not, brethren, for I ſpeak to them that know the law, how that the law hath dominion over a man, as long as he liveth? For the woman which hath an huſband, is bound by the law to her huſband ſo long as he liveth; but if the huſband be dead, ſhe is looſed from the law of her huſband: ſo then, if while her huſband liveth ſhe be married to another man, ſhe ſhall be called an adultereſs." When the ſame Apoſtle permits marriage to his Corinthian converts (which "for the preſent diſtreſs," he judges to be inconvenient) he reſtrains the permiſſion to the marriage of one huſband with one wife: "It is good for a man not to touch a woman; nevertheleſs, to avoid fornication, let every man have his own wife, and let every woman have her own huſband."

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* See Deut. xvii. 17. xxi. 15.

‡ "I ſay unto you, Whoſoever ſhall put away his wife, except it be for fornication, and ſhall marry another, committeth adultery."

The manners of different countries have varied in nothing more than in their domeſtic conſtitutions. Leſs poliſhed and more luxurious nations have either not perceived the bad effects of polygamy, or, if they did perceive them, they who in ſuch countries poſſeſſed the power of reforming the laws have been unwilling to reſign their own gratifications. Polygamy is retained at this day among the *Turks*, and throughout every part of *Aſia* in which Chrſtianity is not profeſſed. In Chriſtian countries it is univerſally prohibited. In *Sweden* it is puniſhed with death. In *England*, beſide the nullity of the ſecond marriage, it ſubjects the offender to tranſportation or impriſonment and branding for the firſt offence, and to capital puniſhment for the ſecond. And whatever may be ſaid in behalf of polygamy, when it is authorized by the law of the land, the marriage of a ſecond wife, during the lifetime of the firſt, in countries where ſuch a ſecond marriage is void, muſt be ranked with the moſt dangerous and cruel of thoſe frauds, by which a woman is cheated out of her fortune, her perſon, and her happineſs.

The ancient *Medes* compelled their citizens, in one canton, to take ſeven wives; in another, each woman to receive five huſbands: according as war had made, in one quarter of their country, an extraordinary havock among the men, or the women had been carried away by an enemy from another. This regulation, ſo far as it was adapted to the proportion which ſubſiſted between the numbers of males and females, was founded in the reaſon upon which the moſt improved nations of *Europe* proceed at preſent.

Cæſar found amongſt the inhabitants of this iſland a ſpecies of polygamy, if it may be ſo called, which was perfectly ſingular. *Uxores*, ſays he, *habent deni duodenique inter ſe communes, et maxime fratres cum fratribus, parenteſque cum liberis: ſed ſi qui ſunt ex his nati, eorum habentur liberi, quo primum virgo quæque deducta eſt.*

Chapter VII.

OF DIVORCE.

BY *Divorce*, I mean, the diſſolution of the marriage contract, by the act, and at the will, of the huſband.

This power was allowed to the huſband, among the *Jews*, the *Greeks*, and latter *Romans;* and is at this day exerciſed by the *Turks* and *Perſians*.

The congruity of ſuch a right with the law of nature, is the queſtion before us.

And in the firſt place, it is manifeſtly inconſiſtent with the duty, which the parents owe to their children; which duty can never be ſo well fulfilled as by their cohabitation and united care. It is alſo incompatible with the right which the mother poſſeſſes, as well as the father, to the gratitude of her children, and the comfort of their ſociety; of both which ſhe is almoſt neceſſarily deprived, by her diſmiſſion from her huſband's family.

Where this objection does not interfere, I know of no principle of the law of nature applicable to the queſtion, beſide that of general expediency.

For, if we ſay, that arbitrary divorces are excluded by the terms of the marriage contract, it may be anſwered, that the contract might be ſo framed as to admit of this condition.

If we argue with ſome moraliſts, that the obligation of a contract naturally continues, ſo long as the purpoſe which the contracting parties had in view, requires its continuance; it will be difficult to ſhew what purpoſe of the contract (the care of children excepted) ſhould confine a man to a woman, from whom he ſeeks to be looſe.

If we contend with others, that a contract cannot, by the law of nature, be diſſolved, unleſs the parties be replaced in the ſituation which each poſſeſſed before the contract was entered into; we ſhall be called upon to prove this to be an univerſal or indiſpenſable property of contracts.

I confeſs myſelf unable to aſſign any circumſtance in the marriage contract, which eſſentially diſtinguiſhes it from other contracts, or which proves that it contains, what many have aſcribed to it, a natural incapacity of being diſſolved by the conſent of the parties, at the option of one of them, or either of them. But if we trace the effects of ſuch a rule upon the general happineſs of married life, we ſhall perceive reaſons of expediency, that abundantly juſtify the policy of thoſe laws which refuſe to the huſband the power of divorce, or reſtrain it to a few extreme and ſpecific provocations: and our principles teach us to pronounce that to be contrary to the law of nature, which can be proved to be detrimental to the common happineſs of the human ſpecies.

A lawgiver, whoſe counſels are directed by views of general utility, and obſtructed by no local ipediment, would make the marriage contract indiſſoluble during the joint lives of the parties, for the ſake of the following advantages:

I. Becauſe this tends to preſerve peace and concord between married perſons, by perpetuating their common intereſt, and by inducing a neceſſity of mutual compliance.

There is great weight and ſubſtance in both theſe conſiderations. An earlier termination of the union would produce a ſeparate intereſt. The wife would naturally look forward to the diſſolution of the partnerſhip, and endeavour to draw to herſelf a fund, againſt the time when ſhe was no longer to have acceſs to the ſame reſources. This would beget peculation on one ſide, and miſtruſt on the other; evils which at preſent very little diſturb the confidence of married life. The ſecond effect of making the union determinable only by death, is not leſs beneficial. It neceſſarily happens that adverſe tempers, habits, and taſtes, oftentimes meet in marriage. In which caſe, each party muſt take pains to give up what offends, and practiſe what may gratify the other. A man and woman in love with each other, do this inſenſibly: but love is neither general nor durable; and where that is wanting, no leſſons of duty, no delicacy of ſentiment, will go half ſo far with the generality of mankind and womankind, as this one intelligible reflection, that they muſt each make the beſt of their bargain; and that ſeeing they muſt either both be miſerable, or both ſhare in the ſame happineſs; neither can find their own comfort but in promoting the pleaſure of the other. Theſe compliances, though at firſt extorted by neceſſity, become in time eaſy and mutual; and though leſs endearing than aſſiduities which take their riſe from affection, generally procure to the married pair a repoſe and ſatisfaction ſufficient for their happineſs.

II. Becauſe new objects of deſire would be continually ſought after, if men could, at will, be releaſed from their ſubſiſting engagements. Suppoſe the huſband to have once preferred his wife to all other women, the duration of this preference cannot be truſted to. Poſſeſſion makes a great difference: and there is no other ſecurity againſt the invitations of novelty, than the known impoſſibility of obtaining the object. Did the cauſe, which brings the ſexes together, hold them together by the ſame force with which it firſt attracted them to each other, or could the woman be reſtored to her perſonal integrity, and to all the advantages of her virgin eſtate; the power of divorce might be depoſited in the hands of the huſband, with leſs danger of abuſe or inconveniency. But conſtituted as mankind are, and injured as the repudiated wife generally muſt be, it is neceſſary to add a ſtability to the condition of married women, more ſecure than the continuance of their huſband's affection; and to ſupply to both ſides, by a ſenſe of duty and of obligation, what ſatiety has impaired of paſſion and of perſonal attachment. Upon the whole, the power of divorce is evidently and greatly to the diſadvantage of the woman; and the only queſtion appears to be, whether the real and permanent happineſs of one half of the ſpecies ſhould be ſurrendered to the caprice and voluptuouſneſs of the other?

We have conſidered divorces as depending upon the will of the huſband, becauſe that is the way in which they have actually obtained in many parts of the world: but the ſame objections apply, in a great degree, to divorces by mutual conſent; eſpecially when we conſider the indelicate ſituation, and ſmall proſpect of happineſs, which remains to the party, who oppoſed his or her diſſent to the liberty and deſire of the other.

The law of nature admits of an exception in favour of the injured party, in caſes of adultery, of obſtinate deſertion, of attempts upon life, of outrageous cruelty, of incurable madneſs, and, perhaps, of perſonal imbecility; but by no means indulges the ſame privilege to mere diſlike, to oppoſition of humours and inclinations, to contrariety of taſte and temper, to complaints of coldneſs, neglect, ſeverity, peeviſhneſs, jealouſy; not that theſe reaſons are trivial, but becauſe ſuch objections may always be alleged, and are impoſſible by teſtimony to be aſcertained; ſo that to allow implicit credit to them, and to diſſolve marriages whenever either party thought fit to pretend them, would lead in its effect to all the licentiouſneſs of arbitrary divorces.

Milton's ſtory is well known. Upon a quarrel with his wife, he paid his addreſſes to another woman, and ſet forth a public vindication of his conduct, by attempting to prove, that confirmed diſlike was as juſt a foundation for diſſolving the marriage contract, as adultery; to which poſition, and to all the arguments by which it can be ſupported, the above conſideration affords a ſufficient anſwer. And if a married pair, in actual and irreconcileable diſcord, complain that their happineſs would be better conſulted, by permitting them to determine a connexion, which has become odious to both, it may be told them that the ſame permiſſion, as a general rule, would produce libertiniſm, diſſenſion, and miſery, amongſt thouſands, who are now virtuous, and quiet, and happy, in their condition: and it ought to ſatisfy them to reflect, that when their happineſs is ſacrificed to the operation of an unrelenting rule, it is ſacrificed to the happineſs of the community.

The ſcriptures ſeem to have drawn the obligation tighter than the law of nature left it. "Whoſoever," ſaith *Chriſt*, "ſhall put away his wife, except it be for fornication, and ſhall marry another, committeth adultery; and whoſo marrieth her which is put away, doth commit adultery." Matt. xix. 9. The law of *Moſes*, for reaſons of local expediency, permitted the *Jewiſh* huſband to put away his wife; but whether for every cauſe, or for what cauſes, appears to have been controverted amongſt the interpreters of thoſe times. *Chriſt*, the precepts of whoſe religion were calculated for more general uſe and obſervation, revokes this permiſſion, as given to the *Jews* "for the hardneſs of their hearts," and promulges a law which was thenceforward to confine divorces to the ſingle cauſe of adultery in the wife. And I ſee no ſufficient reaſon to depart from the plain and ſtrict meaning of *Chriſt*'s words. The rule was new. It both ſurpriſed and offended his diſciples; yet *Chriſt* added nothing to relax or explain it.

Inferior cauſes may juſtify the ſeparation of huſband and wife, although they will not authorize ſuch a diſſolution of the marriage contract, as would leave either party at liberty to marry again; for it is that liberty in which the danger and miſchief of divorces principally conſiſt.

If the care of children does not require that they ſhould live together, and it is become, in the ſerious judgment of both, neceſſary for their mutual happineſs that they ſhould ſeparate, let them ſeparate by conſent. Nevertheleſs, this neceſſity can hardly exiſt, without guilt and miſconduct on one ſide or on both. Moreover, cruelty, ill-uſage, extreme violence, or moroſeneſs of temper, or other great and continued provocations, make it lawful for the party aggrieved to withdraw from the ſociety of the offender without his or her conſent. The law which impoſes the marriage vow, whereby the parties promiſe to "keep to each other," or, in other words, to live together, muſt be underſtood to impoſe it with a ſilent reſervation of theſe caſes; becauſe the ſame law has conſtituted a judicial relief from the tyranny of the huſband, by the divorce *a menſa et toro*, and by the proviſion which it makes for the ſeparate maintenance of the injured wife. St. *Paul* likewiſe diſtinguiſhes between a wife's merely ſeparating herſelf from the family of her huſband,

and her marrying again: "Let not the wife depart from her huſband; but, and if ſhe do depart, let her remain unmarried."

The law of this country, in conformity to our Saviour's injunction, confines the diſſolution of the marriage contract to the ſingle caſe of adultery in the wife; and a divorce even in that caſe can only be brought about by the operation of an act of parliament, founded upon a previous ſentence in the eccleſiaſtical court, and a verdict againſt the adulterer at common law: which proceedings taken together compoſe as complete an inveſtigation of the complaint as a cauſe can receive. It has lately been propoſed to the legiſlature to annex a clauſe to theſe acts, reſtraining the offending party from marrying with the companion of her crime, who, by the courſe of proceeding, is always known and convicted; for there is reaſon to fear, that adulterous connexions are often formed with the proſpect of bringing them to this concluſion; at leaſt, when the ſeducer has once captivated the affection of a married woman, he may avail himſelf of this tempting argument to ſubdue her ſcruples, and complete his victory; and the legiſlature, as the buſineſs is managed at preſent, aſſiſts by its interpoſition the criminal deſign of the offenders, and confers a privilege where it ought to inflict a puniſhment. The propoſal deſerved an experiment; but ſomething more penal will, I apprehend, be found neceſſary to check the progreſs of this alarming depravity. Whether a law might not be framed directing *the fortune of the adultereſs to deſcend as in caſe of her natural death*; reſerving, however, a certain proportion of the produce of it, by way of annuity, for her ſubſiſtence (ſuch annuity in no caſe to exceed a fixed ſum) and alſo ſo far ſuſpending the eſtate in the hands of the heir as to preſerve the inheritance to any children ſhe might bear to a ſecond marriage, in caſe there was none to ſucceed in the place of their mother by the firſt; whether, I ſay, ſuch a law would not render female virtue in higher life leſs vincible, as well as the ſeducers of that virtue leſs urgent in their ſuit, we recommend to the deliberation of thoſe, who are willing to attempt the reformation of this important, but moſt incorrigible claſs of the community. A paſſion for ſplendour, for expenſive amuſements and diſtinctions, is commonly found, in that deſcription of women who would become the objects of ſuch a law, not leſs inordinate than their other appetites. A ſeverity of the kind we propoſe applies immediately to that paſſion. And there is no room for any complaint of injuſtice, ſince the proviſions above ſtated, with others which might be contrived, confine the puniſhment, ſo far as it is poſſible, to the perſon of the offender ; ſuffering the eſtate to remain to the heir, or within the family, of the anceſtor from whom it came, or to attend the appointments of his will.

Sentences of the eccleſiaſtical courts, which releaſe the parties *a vinculo matrimonii* by reaſon of impuberty, frigidity, conſanguinity within the prohibited degrees, prior marriage, or want of the requiſite conſent of parents or guardians, are not diſſolutions of the marriage contract, but judicial declarations, that there never was any marriage ; ſuch impediment ſubſiſting at the time, as rendered the celebration of the marriage rite a mere nullity. And the rite itſelf contains an exception of theſe impediments. The man and woman to be married are charged, "if they know any impediment why they may not be lawfully joined together, to confeſs it ;" and aſſured "that ſo many as are coupled together, otherwiſe than God's word doth allow, are not joined together by God, neither is their matrimony lawful ;" all which is intended by way of ſolemn notice to the parties that the vow they are about to make will bind their conſciences and authorize their cohabitation only upon the ſuppoſition that no legal impediment exiſts.

Chapter VIII.

MARRIAGE.

WHETHER it hath grown out of ſome tradition of the divine appointment of marriage in the perſons of our firſt parents, or merely from a deſign to impreſs the obligation of the marriage contract with a ſolemnity ſuited to its importance, the marriage rite, in almoſt all countries of the world, has been made a religious ceremony;* although marriage in its own nature, and abſtracted from the rules and declarations which the Jewiſh and Chriſtian ſcriptures deliver concerning it, be properly a civil contract, and nothing more.

With reſpect to one main article in matrimonial alliances, a total alteration has taken place in the faſhion of the world; the wife now brings money to her huſband, whereas anciently the huſband paid money to the family of the wife; as was the caſe among the *Jewiſh* patriarchs, the *Greeks*, and the old inhabitants of *Germany*.† This alteration has proved of no ſmall advantage to the female ſex; for their importance in point of fortune procures to them, in modern times, that aſſiduity and reſpect, which are always wanted to compenſate for the inferiority of their ſtrength; but which their perſonal attractions would not always ſecure.

Our buſineſs is with marriage as it is eſtabliſhed in this country. And in treating thereof, it will be neceſſary to ſtate the terms of the marriage vow, in order to diſcover,

1. What duties this vow creates.

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* It was not however in Chriſtian countries required that marriages ſhould be celebrated in churches till the thirteenth century of the Chriſtian era. Marriages in *England* during the Uſurpation were ſolemnized before juſtices of the peace; but for what purpoſe this novelty was introduced, except to degrade the clergy, does not appear.

† The ancient *Aſſyrians* ſold their *beauties* by an annual auction. The prices were applied by way of portions to the more homely. By this contrivance all of both ſorts were diſpoſed of in marriage.

2. What a ſituation of mind at the time is inconſiſtent with it.

3. By what ſubſequent behaviour it is violated.

The huſband promiſes on his part, "to love, comfort, honour, and keep his wife;" the wife on hers, "to obey, ſerve, love, honour, and keep her huſband;" in every variety of health, fortune, and condition; and both ſtipulate, "to forſake all others, and to keep only unto one another, ſo long as they both ſhall live." This promiſe is called the marriage vow; is witneſſed before God and the congregation; accompanied with prayers to Almighty God for his bleſſing upon it; and attended with ſuch circumſtances of devotion and ſolemnity, as place the obligation of it, and the guilt of violating it, nearly upon the ſame foundation with that of oaths.

The parties by this vow engage their perſonal fidelity expreſsly and ſpecifically; they engage likewiſe to conſult and promote each other's happineſs; the wife, moreover, promiſes *obedience* to her huſband. Nature may have made and left the ſexes of the human ſpecies nearly equal in their faculties, and perfectly ſo in their rights; but to guard againſt thoſe competitions which equality, or a conteſted ſuperiority is almoſt ſure to produce, the Chriſtian ſcriptures enjoin upon the wife that obedience which ſhe here promiſes, and in terms ſo peremptory and abſolute, that it ſeems to extend to every thing not criminal, or not entirely inconſiſtent with the woman's happineſs. "Let the wife," ſays St. Paul, "be ſubject to her own huſband in every thing." "The ornament of a meek and quiet ſpirit (ſays the Apoſtle Peter, ſpeaking of the duty of wives) is in the ſight of God of great price." No words ever expreſſed the true merit of the female character ſo well as theſe.

The condition of human life will not permit us to ſay, that no one can conſcientiouſly marry, who does not prefer the perſon at the altar to all other men or women in the world: but we can have no difficulty in pronouncing (whether we reſpect the end of the inſtitution, or the plain terms in which the contract is conceived) that whoever is conſcious, at the time of his marriage, of ſuch a diſlike to the woman he is about to marry, or of ſuch a ſubſiſting attachment to ſome other woman, that he cannot reaſonably, nor does in fact, expect ever to entertain an affection for his future wife, is guilty, when he pronounces the marriage vow, of a direct and deliberate prevarication; and that too, aggravated by the preſence of thoſe ideas of religion, and of the Supreme Being, which the place, the ritual, and the ſolemnity of the occaſion, cannot fail of bringing to his thoughts. The ſame likewiſe of the woman. This charge muſt be imputed to all, who, from mercenary motives, marry the objects of their averſion and diſguſt; and likewiſe to thoſe who deſert, from any motive whatever, the object of their affection, and, without being able to ſubdue that affection, marry another.

The crime of falſehood is alſo incurred by the man, who intends, at the time of his marriage, to commence, renew, or continue a perſonal commerce with any other woman. And the parity of reaſon, if a wife be capable of ſo much guilt, extends to her.

The marriage vow is violated,

1. By adultery.

2. By any behaviour, which, knowingly, renders the life of the other miſerable; as deſertion, neglect, prodigality, drunkenneſs, peeviſhneſs, penurioufneſs, jealouſy, or any levity of conduct, which adminiſters occaſion of jealouſy.

A late regulation in the law of marriages, in this country, has made the conſent of the father, if he be living, of the mother, if ſhe ſurvive the father, and remain unmarried, or of guardians, if both parents be dead, neceſſary to the marriage of a perſon under twenty-one years of age. By the *Roman* law, the conſent *et avi et patris* was required ſo long as they lived. In *France*, the conſent of parents is neceſſary to the marriage of ſons, until they attain to thirty years of age; of daughters, until twenty-five. In *Holland*, for ſons till twenty-five; for daughters, till twenty. And this diſtinction between the ſexes appears to be well founded, for a woman is uſually as properly qualified for the domeſtic and interior duties of a wife or mother at eighteen, as a man is for the buſineſs of the world and the more arduous care of providing for a family at twenty-one.

The conſtitution alſo of the human ſpecies indicates the ſame diſtinction.*

Chapter IX.

OF THE DUTY OF PARENTS.

THAT virtue, which confines its beneficence within the walls of a man's own houſe, we have been accuſtomed to conſider as little better than a more refined ſelfiſhneſs; and yet it will be confeſſed, that the ſubject and matter of this claſs of duties are inferior to none, in utility and importance: and where, it may be aſked, is virtue the moſt valuable, but where it does the moſt good? What duty is the moſt obligatory, but that, on which the moſt depends? And where have we happineſs and miſery ſo much in our power, or liable to be ſo affected by our conduct, as in our own families? It will alſo be acknowledged, that the good order and happineſs of the world are better upheld, whilſt each man applies himſelf to his own concerns and the care of his own family, to which he is preſent, than if every man, from an exceſs of miſtaken generoſity, ſhould leave his own buſineſs, to undertake his neighbour's, which he muſt always manage with leſs knowledge, conveniency, and ſucceſs. If, therefore, the low eſtimation of theſe virtues be well founded, it muſt be owing not to their inferior importance, but to ſome defect or impurity in the motive. And indeed it cannot be denied, but that it is in the power of *aſſociation*, ſo to unite our children's intereſt with our own, as that we ſhould often purſue both from the ſame motive, place both in the ſame object, and with as little ſenſe of duty in one purſuit as in the other. Where this is the caſe, the judgment above ſtated is not far from the truth. And ſo often as we find a ſolicitous care of a man's own family, in a total abſence or extreme penury of every other virtue, or interfering with other duties, or directing its operation ſolely to the temporal happineſs of the children, placing that happineſs and amuſement in indulgence whilſt they are young, or in advancement of fortune when they grow up, there is reaſon to believe that this is the caſe. In this way the common opinion concerning theſe duties may be accounted for and defended. If we look to the ſubject of them, we perceive them to be indiſpenſable: if we regard the motive, we find them often not very meritorious. Wherefore, although a man ſeldom riſes high in our eſteem who has nothing to recommend him beſide the care of his own family, yet we always condemn the neglect of this duty with the utmoſt ſeverity; both by reaſon of the manifeſt and immediate miſchief which we ſee ariſing from this neglect, and becauſe it argues a want not only of parental affection, but of thoſe moral principles, which ought to come in aid of that affection, where it is wanting. And if, on the other hand, our praiſe and eſteem of theſe duties be not proportioned to the good they produce, or to the indignation with which we reſent the abſence of them, it is for this reaſon, that virtue is the moſt valuable, not where it produces the moſt good, but where it is the moſt wanted; which is not the caſe here; becauſe its place is often ſupplied by inſtincts, or involuntary aſſociations. Nevertheleſs, the offices of a parent may be diſcharged from a conſciouſneſs of their obligation, as well as other duties; and a ſenſe of this obligation is ſometimes neceſſary to aſſiſt the ſtimulus of parental affection; eſpecially in ſtations of life, in which the wants of a family cannot be ſupplied without the continual hard labour of the father, nor without his refraining from many indulgencies and recreations, which unmarried men of like condition are able to purchaſe. Where the parental affection is ſufficiently ſtrong, or has fewer difficulties to ſurmount, a principle of duty may ſtill be wanted to direct and regulate its exertions; for otherwiſe, it is apt to ſpend and waſte itſelf in a womaniſh fondneſs for the perſon of the child; an improvident attention to his preſent eaſe and gratification; a pernicious facility and compliance with his humours; an exceſſive and ſuperfluous care to provide the externals of happineſs, with little or no attention to the internal ſources of virtue and ſatisfaction. Univerſally, wherever a parent's conduct is prompted or directed by a ſenſe of duty, there is ſo much virtue.

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* Cum vis prolem procreandi diutiùs hæreat in mare quam in fœmina, populi numerus nequaquam minuetur, ſi ſerius venerem colere inceperint viri.

Having premiſed thus much concerning the place which parental duties hold in the ſcale of human virtues, we proceed to ſtate and explain the duties themſelves.

When moraliſts tell us, that parents are bound to do *all they can* for their children, they tell us more than is true; for, at that rate, every expenſe which might have been ſpared, and every profit omitted which might have been made would be criminal.

The duty of parents has its limits, like other duties; and admits, if not of perfect preciſion, at leaſt of rules definite enough for application.

Theſe rules may be explained under the ſeveral heads of *maintenance*, *education*, and *a reaſonable proviſion for the child's happineſs in reſpect of outward condition.*

I. *Maintenance.*

The wants of children make it neceſſary that ſome perſon maintain them; and, as no one has a right to burthen others by his act, it follows, that the parents are bound to undertake this charge themſelves. Beſide this plain inference, the affection of parents to their children, if it be inſtinctive, and the proviſion which nature has prepared in the perſon of the mother for the ſuſtentation of the infant, concerning the exiſtence and deſign of which there can be no doubt, are manifeſt indications of the divine will.

From hence we learn the guilt of thoſe, who run away from their families, or (what is much the ſame) in conſequence of idleneſs or drunkenneſs, throw them upon a pariſh; or who leave them deſtitute at their death, when, by diligence and frugality, they might have laid up a proviſion for their ſupport: alſo of thoſe, who refuſe or neglect the care of their baſtard offspring, abandoning them to a condition in which they muſt either periſh or become burthenſome to others; for the duty of maintenance, like the reaſon upon which it is founded, extends to baſtards, as well as to legitimate children.

The Chriſtian ſcriptures, although they concern themſelves little with maxims of prudence or economy, and much leſs authorize worldly-mindedneſs or avarice, have yet declared in explicit terms their judgment of the obligation of this duty: "If any provide not for his own, eſpecially for thoſe of his own houſehold, he hath denied the faith, and is worſe than an infidel;" (1 Tim. v. 8.) he hath diſgraced the Chriſtian profeſſion, and fallen ſhort in a duty which even infidels acknowledge.

II. *Education.*

Education, in the moſt extenſive ſenſe of the word, may comprehend every preparation that is made in our youth for the ſequel of our lives: and in this ſenſe I uſe it.

Some ſuch preparation is neceſſary for children of all conditions, becauſe, without it, they muſt be miſerable, and probably will be vicious, when they grow up, either from want of the means of ſubſiſtence, or from want of rational and inoffenſive occupation.

In civilized life, every thing is effected by art and ſkill. Whence a perſon who is provided with neither (and neither can be acquired without exerciſe and inſtruction) will be uſeleſs; and he that is uſeleſs, will generally be at the ſame time miſchievous to the community. So that to ſend an uneducated child into the world is injurious to the reſt of mankind; it is little better than to turn out a mad dog, or a wild beaſt into the ſtreets.

In the inferior claſſes of the community, this principle condemns the neglect of parents, who do not inure their children betimes to labour and reſtraint, by providing them with apprenticeſhips, ſervices, or other regular employment, but who ſuffer them to waſte their youth in idleneſs and vagrancy, or to betake themſelves to ſome lazy, trifling, and precarious calling: for the conſequence of having thus taſted the ſweets of natural liberty, at an age when their paſſion and reliſh for it are at the higheſt, is, that they become incapable for the remainder of their lives of continued induſtry, or of perſevering attention to any thing; ſpend their time in a miſerable ſtruggle between the importunity of want, and the irkſomeneſs of regular application; and are prepared to embrace every expedient, which preſents a hope of ſupplying their neceſſities without confining them to the plough, the loom, the ſhop, or the counting-houſe.

In the middle orders of ſociety, thoſe parents are moſt reprehenſible, who neither qualify their children for a profeſſion, nor enable them to live without one:* and thoſe in the higheſt, who, from indolence, indulgence, or avarice, omit to procure their children thoſe liberal attainments, which are neceſſary to make them uſeful in the ſtations to which they are deſtined. A man of fortune, who permits his ſon to conſume the ſeaſon of education, in hunting, ſhooting, or in frequenting horſe-races, aſſemblies, or other unedifying, if not vicious diverſions, defrauds the community of a benefactor, and bequeaths them a nuiſance.

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* Amongſt the *Athenians*, if the parent did not put his child into a way of getting a livelihood, the child was not bound to make proviſion for the parent when old and neceſſitous.

Some, though not the ſame, preparation for the ſequel of their lives, is neceſſary for youth of every deſcription; and therefore for baſtards, as well as for children of better expectations. Conſequently, they who leave the education of their baſtards to chance, contenting themſelves with making proviſion for their ſubſiſtence, deſert half their duty.

III. A reaſonable proviſion for the happineſs of a child in reſpect of outward condition, requires three things: a ſituation ſuited to his habits and reaſonable expectations; a competent proviſion for the exigencies of that ſituation; and a probable ſecurity for his virtue.

The two firſt articles will vary with the condition of the parent. A ſituation ſomewhat approaching in rank and condition to the parent's own; or, where that is not practicable, ſimilar to what other parents of like condition provide for their children, bounds the reaſonable, as well as (generally ſpeaking) the actual expectations of the child, and therefore contains the extent of the parent's obligation.

Hence, a peaſant ſatisfies his duty, who ſends out his children, properly inſtructed for their occupation, to huſbandry, or to any branch of manufacture. Clergymen, lawyers, phyſicians, officers in the army or navy, gentlemen poſſeſſing moderate fortunes of inheritance, or exerciſing trade in a large or liberal way, are required by the ſame rule to provide their ſons with learned profeſſions, commiſſions in the army or navy, places in public offices, or reputable branches of merchandize. Providing a child with a ſituation, includes a competent ſupply for the expenſes of that ſituation, until the profits of it enable the child to ſupport himſelf. Noblemen, and gentlemen of high rank and fortune, may be bound to tranſmit an inheritance to the repreſentatives of their family, ſufficient for their ſupport without the aid of a trade or profeſſion, to which there is little hope that a youth, who has been flattered with other expectations, will apply himſelf with diligence or ſucceſs. In theſe parts of the world, public opinion has aſſorted the members of the community into four or five general claſſes, each claſs compriſing a great variety of employments and profeſſions, the choice of which muſt be committed to the private diſcretion of the parent.* All that can be expected from parents as a *duty*, and therefore the only rule which a moraliſt can deliver upon the ſubject is, that they endeavour to preſerve their children in the *claſs* in which they are born, that is to ſay, in which others of ſimilar expectations are accuſtomed to be placed; and that they be careful to confine their hopes and habits of indulgence to objects which will continue to be attainable.

It is an ill-judged thrift in ſome rich parents, to bring up their ſons to mean employments, for the ſake of ſaving the charge of a more expenſive education: for theſe ſons, when they become maſters of their liberty and fortune, will hardly continue in occupations by which they think themſelves degraded, and are ſeldom qualified for any thing better.

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* The health and virtue of a child's future life are conſiderations ſo ſuperior to all others, that whatever is likely to have the ſmalleſt influence upon theſe, deſerves the parent's firſt attention. In reſpect of health, agriculture, and all active, rural, and out-of-door employments, are to be preferred to manufactures, and ſedentary occupations. In reſpect of virtue, a courſe of dealings in which the advantage is mutual, in which the profit on one ſide is connected with the benefit of the other (which is the caſe in trade, and all ſerviceable art or labour) is more favourable to the moral character, than callings in which one man's gain is another man's loſs; in which what you acquire, is acquired without equivalent, and parted with in diſtreſs; as in gaming, and whatever partakes of gaming, and in the predatory profits of war. The following diſtinctions alſo deſerve notice. A buſineſs, like a retail trade, in which the profits are ſmall and frequent, and accruing from the employment, furniſhes a moderate and conſtant engagement to the mind, and ſo far ſuits better with the general diſpoſition of mankind, than profeſſions which are ſupported by fixed ſalaries, as ſtations in the church, army, navy, revenue, public offices, &c. or wherein the profits are made in large ſums, by a few great concerns, or fortunate adventures: as in many branches of wholeſale and foreign merchandize, in which the occupation is neither ſo conſtant, nor the activity ſo kept alive by immediate encouragement. For ſecurity, manual arts exceed merchandize, and ſuch as ſupply the wants of mankind are better than thoſe which miniſter to their pleaſure. Situations which promiſe an early ſettlement in marriage, are on many accounts to be choſen before thoſe which require a longer waiting for a larger eſtabliſhment.

An attention, in the firſt place, to the exigencies of the children's reſpective conditions in the world; and a regard in the ſecond place, to their reaſonable expectations, always poſtponing the expectations to the exigencies, when both cannot be ſatisfied, ought to guide parents in the diſpoſal of their fortunes after their death. And theſe exigencies and expectations muſt be meaſured by the ſtandard which cuſtom has eſtabliſhed; for there is a certain appearance, attendance, eſtabliſhment, and mode of living, which cuſtom has annexed to the ſeveral ranks and orders of civil life (and which compoſe what is called *decency*) together with a certain ſociety, and particular pleaſures belonging to each claſs: and a young perſon, who is withheld from ſharing in theſe for want of fortune, can ſcarcely be ſaid to have a fair chance for happineſs; the indignity and mortification of ſuch a ſecluſion being what few tempers can bear, or bear with contentment. And as to the ſecond conſideration, of what a child may reaſonably expect from his parent, he will expect what he ſees all or moſt others in ſimilar circumſtances receive; and we can hardly call expectations unreaſonable, which it is impoſſible to ſuppreſs.

By virtue of this rule, a parent is juſtified in making a difference between his children, according as they ſtand in greater or leſs need of the aſſiſtance of his fortune, in conſequence of the difference of their age or ſex, or of the ſituations in which they are placed, or the various ſucceſs which they have met with.

On account of the few lucrative employments which are left to the female ſex, and by conſequence the little opportunity they have of adding to their income, daughters ought to be the particular objects of a parent's care and foreſight; and as an option of marriage, from which they can reaſonably expect happineſs, is not preſented to every woman who deſerves it, eſpecially in times in which a licentious celibacy is in faſhion with the men, a father ſhould endeavour to enable his daughters to lead a ſingle life with independency and decorum, even though he ſubtract more for that purpoſe from the portions of his ſons, than is agreeable to modern uſage, or than they expect.

But when the exigencies of their ſeveral ſituations are provided for, and not before, a parent ought to admit the ſecond conſideration, the ſatisfaction of his children's expectations; and upon that principle to prefer the eldeſt ſon to the reſt, and ſons to daughters: which conſtitutes the right, and the whole right of primogeniture, as well as the only reaſon for the preference of one ſex to the other. The preference, indeed, of the firſt born has one public good effect, that if the eſtate were divided equally amongſt the ſons, it would probably make them all idle; whereas, by the preſent rule of deſcent, it makes only one ſo; which is the leſs evil of the two. And it muſt farther be obſerved on the part of ſons, that if the reſt of the community make it a rule to prefer ſons to daughters, an individual of that community ought to guide himſelf by the ſame rule, upon principles of mere equality. For, as the ſon ſuffers by the rule in the fortune he may expect in marriage, it is but reaſonable that he ſhould receive the advantage of it in his own inheritance. Indeed, whatever the rule be, as to the preference of one ſex to the other, marriage reſtores the equality. And as money is generally more convertible to profit, and more likely to promote induſtry, in the hands of men than of women, the cuſtom of this country may properly be complied with, when it does not interfere with the weightier reaſon explained in the laſt paragraph.

The point of the children's actual expectations, together with the expediency of ſubjecting the illicit commerce of the ſexes to every diſcouragement which it can receive, makes the difference between the claims of legitimate children and of baſtards. But neither reaſon will in any caſe juſtify the leaving of baſtards to the world, without proviſion, education, or profeſſion; or, what is more cruel, without the means of continuing in the ſituation to which the parent has introduced them: which laſt, is to leave them to inevitable miſery.

After the firſt requiſite, namely, a proviſion for the exigencies of his ſituation, is ſatisfied, a parent may diminiſh a child's portion, in order to puniſh any flagrant crime, or to puniſh contumacy and want of filial duty in inſtances not otherwiſe criminal; for a child who is conſcious of bad behaviour, or of contempt of his parent's will and happineſs, cannot reaſonably expect the ſame inſtances of his munificence.

A child's vices may be of that ſort, and his vicious habits ſo incorrigible, as to afford much the ſame reaſon for believing that he will waſte or miſemploy the fortune put into his power, as if he were mad or idiotiſh, in which caſe a parent may treat him as a mad man or an idiot; that is, may deem it ſufficient to provide for his ſupport by an annuity equal to his wants and innocent enjoyments, and which he may be reſtrained from alienating. This ſeems to be the only caſe in which a diſinheriſon, nearly abſolute, is juſtifiable.

Let not a father hope to excuſe an inofficious diſpoſition of his fortune, by alleging, that "every man may do what he will with his own." All the truth which this expreſſion contains, is, that his diſcretion is under no control of law; and that his will, however capricious, will be valid. This by no means abſolves his conſcience from the obligations of a parent, or imports that he may neglect, without injuſtice, the ſeveral wants and expectations of his family, in order to gratify a whim or a pique, or indulge a preference founded in no reaſonable diſtinction of merit or ſituation. Although in his intercourſe with his family, and in the leſſer endearments of domeſtic life, a parent may not always reſiſt his partiality to a favourite child (which, however, ſhould be both avoided and concealed, as oftentimes productive of laſting jealouſies and diſcontents;) yet, when he ſits down to make his will, theſe tenderneſſes muſt give place to more manly deliberations.

A father of a family is bound to adjuſt his economy with a view to theſe demands upon his fortune; and until a ſufficiency for theſe ends is acquired, or in due time *probably* will be acquired (for in human affairs *probability* ought to content us) frugality and exertions of induſtry are duties. He is alſo juſtified in the declining expenſive liberality; for, to take from thoſe who want, in order to give to thoſe who want, adds nothing to the ſtock of public happineſs. Thus far, therefore, and no farther, the plea of "children," of "large families," "charity begins at home," &c. is an excuſe for parſimony, and an anſwer to thoſe who ſolicit our bounty. Beyond this point, as the uſe of riches becomes leſs, the deſire of *laying up* ſhould abate proportionably. The truth is, our children gain not ſo much as we imagine, in the chance of this world's happineſs, or even of its external proſperity, by ſetting out in it with large capitals. Of thoſe who have died rich, a great part began with little. And, in reſpect of enjoyment, there is no compariſon between a fortune, which a man acquires by well applied induſtry, or by a ſeries of ſucceſſes in his buſineſs, and one found in his poſſeſſion, or received from another.

A principal part of a parent's duty is ſtill behind, viz. the uſing of proper precautions and expedients, in order to form and preſerve his children's virtue.

To us, who believe that in one ſtage or other of our exiſtence virtue will conduct to happineſs, and vice terminate in miſery; and who obſerve withal, that men's virtues and vices are, to a certain degree, produced or affected by the management of their youth, and the ſituations in which they are placed; to all who attend to theſe reaſons, the obligation to conſult a child's virtue will appear to differ in nothing from that by which the parent is bound to provide for his maintenance or fortune. The child's intereſt is concerned in the one means of happineſs as well as in the other; and both means are equally, and almoſt excluſively, in the parent's power.

For this purpoſe, the firſt point to be endeavoured after is, to impreſs upon children the idea of *accountableneſs*, that is, to accuſtom them to look forward to the conſequences of their actions in another world; which can only be brought about by the parents viſibly acting with a view to theſe conſequences themſelves. Parents, to do them juſtice, are ſeldom ſparing in leſſons of virtue and religion; in admonitions which coſt little, and which profit leſs; whilſt their *example* exhibits a continual contradiction of what they teach. A father, for inſtance, will, with much ſolemnity and apparent earneſtneſs, warn his ſon againſt idleneſs, exceſs in drinking, debauchery, and extravagance, who himſelf loiters about all day without employment; comes home every night drunk; is made infamous in his neighbourhood by ſome profligate connexion; and waſtes the fortune which ſhould ſupport or remain a proviſion for his family in riot, or luxury, or oſtentation. Or he will diſcourſe gravely before his children of the obligation and importance of revealed religion, whilſt they ſee the moſt frivolous and oftentimes feigned excuſes detain him from its reaſonable and ſolemn ordinances. Or he will ſet before them, perhaps, the ſupreme and tremendous authority of Almighty God; that ſuch a being ought not to be named, or even thought upon, without ſentiments of profound awe and veneration. This may be the lecture he delivers to his family one hour; when the next, if an occaſion ariſe to excite his anger, his mirth, or his ſurpriſe, they will hear him treat the name of the Deity with the moſt irreverent profanation, and ſport with the terms and denunciations of the Chriſtian religion, as if they were the language of ſome ridiculous and long exploded ſuperſtition. Now, even a child is not to be impoſed upon by ſuch mockery. He ſees through the grimace of this counterfeited concern for virtue. He diſcovers that his parent is acting a part; and receives his admonitions as he would hear the ſame maxims from the mouth of a player. And when once this opinion has taken poſſeſſion of the child's mind, it has a fatal effect upon the parent's influence in all ſubjects; even in thoſe, in which he himſelf may be ſincere and convinced. Whereas a ſilent, but obſervable regard to the duties of religion, in the parent's own behaviour, will take a ſure and gradual hold of the child's diſpoſition, much beyond formal reproofs and chidings, which, being generally prompted by ſome preſent provocation, diſcover more of anger than of principle, and are always received with a temporary alienation and diſguſt.

A good parent's firſt care is to be virtuous himſelf; his ſecond, to make his virtues as eaſy and engaging to thoſe about him, as their nature will admit. Virtue itſelf offends, when coupled with forbidding manners. And ſome virtues may be urged to ſuch exceſs, or brought forward ſo unſeaſonably, as to diſcourage and repel thoſe, who obſerve and who are acted upon by them, inſtead of exciting an inclination to imitate and adopt them. Young minds are particularly liable to theſe unfortunate impreſſions. For inſtance, if a father's economy degenerate into a minute and teaſing parſimony, it is odds but that the ſon, who has ſuffered under it, ſet out a ſworn enemy to all rules of order and frugality. If a father's piety be moroſe, rigorous, and tinged with melancholy, perpetually breaking in upon the recreation of his family, and ſurfeiting them with the language of religion upon all occaſions, there is danger leſt the ſon carry from home with him a ſettled prejudice againſt ſerioufneſs and religion, as inconſiſtent with every plan of a pleaſurable life; and turn out, when he mixes with the world, a character of levity or diſſoluteneſs.

Something likewiſe may be done towards the correcting or improving of thoſe early inclinations which children diſcover, by diſpoſing them into ſituations the leaſt dangerous to their particular characters. Thus, I would make choice of a retired life for young perſons addicted to licentious pleaſures; of private ſtations for the proud and paſſionate; of liberal profeſſions, and a town life, for the mercenary and ſottiſh: and not, according to the general practice of parents, ſend diſſolute youths into the army; penurious tempers to trade; or make a crafty lad an attorney; or flatter a vain and haughty temper with elevated names, or ſituations, or callings, to which the faſhion of the world has annexed precedency and diſtinction, but in which his diſpoſition, without at all promoting his ſucceſs, will ſerve both to multiply and exaſperate his diſappointments. In the ſame way, that is, with a view to the particular frame and tendency of the pupil's character, I would make choice of a public or private education. The reſerved, timid, and indolent, will have their faculties called forth and their nerves invigorated by a public education. Youths of ſtrong ſpirits and paſſions will be ſafer in a private education. At our public ſchools, as far as I have obſerved, more literature is acquired, and more vice: quick parts are cultivated, ſlow ones are neglected. Under private tuition, a moderate proficiency in juvenile learning is ſeldom exceeded, but with more certainty attained.

Chapter X.

THE RIGHTS OF PARENTS.

THE Rights of Parents reſult from their duties. If it be the duty of a parent to educate his children, to form them for a life of uſefulneſs and virtue, to provide for them ſituations needful for their ſubſiſtence and ſuited to their circumſtances, and to prepare them for thoſe ſituations; he has a right to ſuch authority, and in ſupport of that authority to exerciſe ſuch diſcipline, as may be neceſſary for theſe purpoſes. The law of nature acknowledges no other foundation of a parent's right over his children, beſide his duty towards them (I ſpeak now of ſuch rights as may be enforced by coercion.) This relation confers no property in their perſons, or natural dominion over them, as is commonly ſuppoſed.

Since it is, in general, neceſſary to determine the deſtination of children, before they are capable of judging of their own happineſs, parents have a right to elect profeſſions for them.

As the mother herſelf owes obedience to the father, her authority muſt ſubmit to his. In a competition, therefore, of commands, the father is to be obeyed. In caſe of the death of either, the authority, as well as duty, of both parents devolves upon the ſurvivor.

Theſe rights, always following the duty, belong likewiſe to guardians; and ſo much of them, as is delegated by the parents or guardians, belongs to tutors, ſchoolmaſters, &c.

From this principle, "that the rights of parents reſult from their duty," it follows, that parents have no natural right over the lives of their children, as was abſurdly allowed to *Roman* fathers; nor any to exerciſe unprofitable ſeverities; nor to command the commiſſion of crimes; for theſe rights can never be wanted for the purpoſes of a parent's duty.

Nor, for the ſame reaſon, have parents any right to ſell their children into ſlavery. Upon which, by the way, we may obſerve, that the children of ſlaves are not, by the law of nature, born ſlaves; for, as the maſter's right is derived to him through the parent, it can never be greater than the parent's own.

Hence alſo it appears, that parents not only pervert, but exceed their juſt authority, when they conſult their own ambition, intereſt, or prejudice, at the manifeſt expenſe of their children's happineſs. Of which abuſe of parental power, the following are inſtances: the ſhutting up of daughters and younger ſons in nunneries and monaſteries, in order to preſerve entire the eſtate and dignity of the family; or the uſing of any arts, either of kindneſs or unkindneſs, to induce them to make choice of this way of life themſelves; or, in countries where the clergy are prohibited from marriage, putting ſons into the church for the ſame end, who are never likely either to do or receive any good in it, ſufficient to compenſate for this ſacrifice; the urging of children to marriages from which they are averſe, with the view of exalting or enriching the family, or for the ſake of connecting eſtates, parties, or intereſts; or the opposing of a marriage, in which the child would probably find his happineſs, from a motive of pride or avarice, of family hoſtility, or perſonal pique.

Chapter XI.

THE DUTY OF CHILDREN.

THE Duty of Children may be conſidered,

I. During childhood. II. After they have attained to manhood, but continue in their father's family. III. After they have attained to manhood, and have left their father's family.

I. *During childhood.*

Children muſt be ſuppoſed to have attained to ſome degree of diſcretion before they are capable of any duty. There is an interval of eight or nine years, between the dawning and the maturity of reaſon, in which it is neceſſary to ſubject the inclination of children to many reſtraints, and direct their application to many employments, of the tendency and uſe of which they cannot judge; for which cauſe, the ſubmiſſion of children during this period muſt be ready and implicit, with an exception, however, of any manifeſt crime, which may be commanded them.

II. *After they have attained to manhood, but continue in their father's family.*

If children, when they are grown up, voluntarily continue members of their father's family, they are bound, beſide the general duty of gratitude to their parents, to obſerve ſuch regulations of the family as the father ſhall appoint; contribute their labour to its ſupport, if required; and confine themſelves to ſuch expenſes as he ſhall allow. The obligation would be the ſame, if they were admitted into any other family, or received ſupport from any other hand.

III. *After they have attained to manhood, and have left their father's family.*

In this ſtate of the relation, the duty to parents is ſimply the duty of gratitude; not different *in kind*, from that which we owe to any other benefactor; *in degree*, juſt ſo much exceeding other obligations, by how much a parent has been a greater benefactor than any other friend. The ſervices and attentions, by which filial gratitude may be teſtified, can be compriſed within no enumeration. It will ſhew itſelf in compliances with the will of the parents, however contrary to the child's own taſte or judgment, provided it be neither criminal, nor totally inconſiſtent with his happineſs; in a conſtant endeavour to promote their enjoyments, prevent their wiſhes, and ſoften their anxieties, in ſmall matters as well as in great; in aſſiſting them in their buſineſs; in contributing to their ſupport, eaſe, or better accommodation, when their circumſtances require it; in affording them our company, in preference to more amuſing engagements; in waiting upon their ſickneſs or decrepitude; in bearing with the infirmities of their health or temper, with the peeviſhneſs and complaints, the unfaſhionable, negligent, auſtere manners, and offenſive habits, which often attend upon advanced years: for where muſt old age find indulgence, if it do not meet with it in the piety and partiality of children?

The moſt ſerious contentions between parents and their children, are thoſe commonly which relate to marriage, or to the choice of a profeſſion.

A parent has, in no caſe, a right to deſtroy his child's happineſs. If it be true, therefore, that there exiſt ſuch perſonal and excluſive attachments between individuals of different ſexes, that the poſſeſſion of a particular man or woman in marriage be really neceſſary for the child's happineſs; or if it be true, that an averſion to a particular profeſſion may be involuntary and unconquerable; then it will follow, that parents, where this is the caſe, ought not to urge their authority, and that the child is not bound to obey it.

The point is, to diſcover how far, in any particular inſtance, this *is* the caſe. Whether the fondneſs of lovers ever continues with ſuch intenſity, and ſo long, that the ſucceſs of their deſires conſtitutes, or the diſappointment affects, any conſiderable portion of their happineſs, compared with that of their whole life, it is difficult to determine; but there can be no difficulty in pronouncing, that not one half of thoſe attachments which young people conceive with ſo much haſte and paſſion, are of this ſort. I believe it alſo to be true, that there are few averſions to a profeſſion, which reſolution, perſeverance, activity in going about the duty of it, and above all, deſpair of changing, will not ſubdue: yet there are ſome ſuch. Wherefore, a child who reſpects his parents' judgment, and is, as he ought to be, tender of their happineſs, owes, at leaſt, ſo much deference to their will, as to try fairly and faithfully, in one caſe, whether time and abſence will not cool an affection which they diſapprove; and, in the other, whether a longer continuance in the profeſſion which they have choſen for him, may not reconcile him to it. The whole depends upon the experiment being made on the child's part with ſincerity, and not merely with a deſign of compaſſing his purpoſe at laſt, by means of a ſimulated and temporary compliance. It is the nature of love and hatred, and of all violent affections, to delude the mind with a perſuaſion, that we ſhall always continue to feel them, as we feel them at preſent: we cannot conceive that they will either change or ceaſe. Experience of ſimilar or greater changes in ourſelves, or a habit of giving credit to what our parents, or tutors, or books teach us, may control this perſuaſion: otherwiſe it renders youth very untractable; for they ſee clearly and truly that it is impoſſible they ſhould be happy under the circumſtances propoſed to them, in their preſent ſtate of mind. After a ſincere but ineffectual endeavour, by the child, to accommodate his inclination to his parent's pleaſure, he ought not to ſuffer in his parent's affection, or in his fortunes. The parent, when he has reaſonable proof of this, ſhould acquieſce: at all events, the child is *then* at liberty to provide for his own happineſs.

Parents have no right to urge their children upon marriages to which they are averſe; nor ought, in any ſhape, to reſent the children's diſobedience to ſuch commands. This is a different caſe from oppoſing a match of inclination, becauſe the child's miſery is a much more probable conſequence; it being eaſier to live without a perſon that we love, than with one whom we hate. Add to this, that compulſion in marriage neceſſarily leads to prevarication; as the reluctant party promiſes an affection, which neither exiſts, nor is expected to take place; and parental, like all human authority, ceaſes at the point where obedience becomes criminal.

In the abovementioned, and in all conteſts between parents and children, it is the parent's duty to repreſent to the child the conſequences of his conduct; and it will be found his beſt policy to repreſent them with fidelity. It is uſual for parents to exaggerate theſe deſcriptions beyond probability, and by exaggeration to loſe all credit with their children; thus, in a great meaſure, defeating their own end.

Parents are forbidden to interfere, where a truſt is repoſed perſonally in the ſon; and where, conſequently, the ſon was expected, and by virtue of that expectation is obliged, to purſue his own judgment, and not that of any other : as is the caſe with judicial magiſtrates in the execution of their office ; with members of the legiſlature in their votes ; with electors, where preference is to be given to certain preſcribed qualifications. The ſon may aſſiſt his own judgment by the advice of his father, or of any one whom he chooſes to conſult : but his own judgment, whether it proceed upon knowledge or authority, ought finally to determine his conduct.

The duty of children to their parents was thought worthy to be made the ſubject of one of the ten commandments ; and, as ſuch, is recognized by *Chriſt*, together with the reſt of the moral precepts of the decalogue, in various places of the goſpel.

The ſame Divine Teacher's ſentiments concerning the relief of indigent parents, appear ſufficiently from that manly and deſerved indignation, with which he reprehended the wretched caſuiſtry of the *Jewiſh* expoſitors, who, under the name of a tradition, had contrived a method of evading this duty, by converting, or pretending to convert, to the treaſury of the temple, ſo much of their property, as their diſtreſſed parent might be entitled by their law to demand.

Agreeably to this law of nature and Chriſtianity, children are, by the law of *England*, bound to ſupport as well their immediate parents, as their grandfather and grandmother, or remoter anceſtors, who ſtand in need of ſupport.

Obedience to parents is enjoined by St. *Paul* to the *Epheſians* : "Children, obey your parents in the Lord, for this is right ;" and to the *Coloſſians* : "Children, obey your parents in all things, for this is well pleaſing unto the Lord."*

By the *Jewiſh* law, diſobedience to parents was in ſome extreme caſes capital. Deut. xxi. 18.

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* Upon which two phraſes, "this is right," and "for this is well pleaſing unto the Lord," being uſed by St. *Paul* in a ſenſe perfectly parallel, we may obſerve, that moral rectitude and conformity to the divine will, were, in his apprehenſion, the ſame.

BOOK IV.

Duties to Ourſelves.

THIS diviſion of the ſubject is retained merely for the ſake of *method*, by which the writer and the reader are equally aſſiſted. To the ſubject itſelf it imports nothing; for the obligation of all duties being fundamentally the ſame, it matters little under what claſs or title any of them are conſidered. In ſtrictneſs, there are few duties or crimes, which terminate in a man's ſelf; and, ſo far as others are affected by their operation, they have been treated of in ſome article of the preceding book. We have reſerved, however, to this head, the *rights of ſelf-defence*; alſo the conſideration of *drunkenneſs* and *ſuicide*, as offences againſt that care of our faculties, and preſervation of our perſon, which we account duties, and call *Duties to Ourſelves.*

Chapter I.

THE RIGHTS OF SELF-DEFENCE.

IT has been aſſerted, that in a ſtate of nature we might lawfully defend the moſt inſignificant right, provided it were a perfect, determinate right, by any extremities which the obſtinacy of the aggreſſor rendered neceſſary. Of this I doubt; becauſe I doubt whether the general rule be worth ſuſtaining at ſuch an expenſe, and becauſe, apart from the general conſequence of yielding to the attempt, it cannot be contended to be for the augmentation of human happineſs, that one man ſhould loſe his life or a limb, rather than another a pennyworth of his property. Nevertheleſs, perfect rights can only be diſtinguiſhed by their value ; and it is impoſſible to aſcertain the value, at which the liberty of uſing extreme violence begins. The perſon attacked muſt balance, as well as he can, between the general conſequence of yielding, and the particular effect of reſiſtance.

However, this right, if it exiſt in a ſtate of nature, is ſuſpended by the eſtabliſhment of civil ſociety ; becauſe *thereby* other remedies are provided againſt attacks upon our property, and becauſe it is neceſſary to the peace and ſafety of the community, that the prevention, puniſhment, and redreſs of injuries be adjuſted by public laws. Moreover, as the individual is aſſiſted in the recovery of his right, or of a compenſation for his right, by the public ſtrength, it is no leſs equitable than expedient, that he ſhould ſubmit to public arbitration, the kind as well as the meaſure of the ſatisfaction which he is to obtain.

There is one caſe in which all extremities are juſtifiable, namely, when our life is aſſaulted, and it becomes neceſſary for our preſervation to kill the aſſailant. This is evident in a ſtate of nature ; unleſs it can be ſhown, that we are bound to prefer the aggreſſor's life to our own, that is to ſay, to love our enemy *better than* ourſelves, which can never be a debt of juſtice, nor any where appears to be a duty of charity. Nor is the caſe altered by our living in civil ſociety ; becauſe, by the ſuppoſition, the laws of ſociety cannot interpoſe to protect us, nor by the nature of the caſe compel reſtitution. This liberty is reſtrained to caſes, in which no other probable means of preſerving our life remain, as flight, calling for aſſiſtance, diſarming the adverſary, &c. The rule holds, whether the danger proceed from a voluntary attack, as by an enemy, robber, or aſſaſſin ;

or from an involuntary one, as by a madman, or perſon ſinking in the water and dragging us after him; or where two perſons are reduced to a ſituation, in which one or both of them muſt periſh; as in a ſhipwreck, where two ſeize upon a plank, which will ſupport only one: although, to ſay the truth, theſe extreme caſes, which happen ſeldom, and hardly, when they do happen, admit of moral agency, are ſcarcely worth mentioning, much leſs diſcuſſing at length.

The inſtance, which approaches the neareſt to the preſervation of life, and which ſeems to juſtify the ſame extremities, is the defence of chaſtity.

In all other caſes, it appears to me the ſafeſt to conſider the taking away of life as authorized by the law of the land; and the perſon who takes it away, as in the ſituation of a miniſter or executioner of the law.

In which view, homicide, in *England*, is juſtifiable,

1. To prevent the commiſſion of a crime, which, when committed, would be puniſhable with death. Thus it is lawful to ſhoot a highwayman, or one attempting to break into a houſe by night; but not ſo if the attempt be made in the day-time; which particular diſtinction, by a conſent of legiſlation that is remarkable, obtained alſo in the *Jewiſh* law, as well as in the laws both of *Greece* and *Rome*.

2. In neceſſary endeavours to carry the law into execution, as in ſuppreſſing riots, apprehending malefactors, preventing eſcapes, &c.

I do not know that the law holds forth its authority to any caſes beſide thoſe which fall within one or other of the above deſcriptions; or that, after the exception of immediate danger to life or chaſtity, the deſtruction of a human being can be innocent without that authority.

The rights of war are not here taken into the account.

Chapter II.

DRUNKENNESS.

DRUNKENNESS is either actual or habitual; juſt as it is one thing to be drunk, and another to be a drunkard. What we ſhall deliver upon the ſubject, muſt principally be underſtood of a *habit* of intemperance; although part of the guilt and danger deſcribed may be applicable to caſual exceſſes; and *all* of it, in a certain degree, foraſmuch as every habit is only a repetition of ſingle inſtances.

The miſchief of drunkenneſs, from which we are to compute the guilt of it, conſiſts in the following bad effects:

1. It betrays moſt conſtitutions either into extravagancies of anger, or ſins of lewdneſs.
2. It diſqualifies men for the duties of their ſtation, both by the temporary diſorder of their faculties, and at length by a conſtant incapacity and ſtupefaction.
3. It is attended with expenſes, which can often be ill ſpared.
4. It is ſure to occaſion uneaſineſs to the family of the drunkard.
5. It ſhortens life.

To theſe conſequences of drunkenneſs muſt be added the peculiar danger and miſchief of the *example*. Drunkenneſs is a ſocial feſtive vice; apt, beyond any vice that can be mentioned, to draw in others by the example. The drinker collects his circle; the circle naturally ſpreads; of thoſe who are drawn within it, many become the corrupters and centres of ſets and circles of their own; every one countenancing, and, perhaps, emulating the reſt, till a whole neighbourhood be infected from the contagion of a ſingle example. This account is confirmed by what we often obſerve of drunkenneſs, that it is a *local* vice; found to prevail in certain countries, in certain diſtricts of a country, or in particular towns, without any reaſon to be given for the faſhion, but that it had been introduced by ſome popular examples. With this obſervation upon the ſpreading quality of drunkenneſs, let us connect a remark which belongs to the ſeveral evil effects above recited. The conſequences of a vice, like the ſymptoms of a diſeaſe, though they be all enumerated in the deſcription, ſeldom all meet in the ſame ſubject. In the inſtance under conſideration, the age and temperature of one drunkard may have little to fear from inflammations of luſt or anger; the fortune of a ſecond may not be injured by the expenſe; a third may have no family to be diſquieted by his irregularities; and a fourth may poſſeſs a conſtitution fortified againſt the poiſon of ſtrong liquors. But if, as we always ought to do, we comprehend within the conſequences of our conduct the miſchief and tendency of the example, the above circumſtances, however fortunate for the individual, will be found to vary the guilt of his intemperance, leſs, probably, than he ſuppoſes. The moraliſt may expoſtulate with him thus: Although the waſte of time and money be of ſmall importance to you, it may be of the utmoſt to ſome one or other whom your ſociety corrupts. Repeated, or long continued exceſſes, which hurt not *your* health, may be fatal to your companion. Although you have neither wife, nor child, nor parent, to lament your abſence from home, or expect your return to it with terror; other families, in which huſbands and fathers have been invited to ſhare in your ebriety, or encouraged to imitate it, may juſtly lay their miſery or ruin at your door. This will hold good, whether the perſon ſeduced, be ſeduced immediately by you, or the vice be propagated from you to him, through ſeveral intermediate examples. All theſe conſiderations it is neceſſary to aſſemble, to judge truly of a vice, which uſually meets with milder names, and more indulgence than it deſerves.

I omit thoſe outrages upon one another, and upon the peace and ſafety of the neighbourhood, in which drunken revels often end; and alſo thoſe deleterious and maniacal effects, which ſtrong liquors produce upon particular conſtitutions; becauſe, in general propoſitions concerning drunkenneſs, no conſequences ſhould be included, but what are conſtant enough to be generally expected.

Drunkenneſs is repeatedly forbidden by St. *Paul*: "Be not drunk with wine, wherein is exceſs." "Let us walk honeſtly as in the day, not in rioting and drunkenneſs." "Be not deceived: neither fornicators—nor *drunkards*, nor revilers, nor extortioners, ſhall inherit the kingdom of God," *Eph.* v. 18. *Rom.* xiii. 13. 1 *Cor.* vi. 9, 10. The ſame Apoſtle likewiſe condemns drunkenneſs, as peculiarly inconſiſtent with the Chriſtian profeſſion: "They that be drunken, are drunken in the night; but let us, who are of the day, be ſober." 1 *Theſ.* v. 7, 8. We are not concerned with the argument; the words amount to a prohibition of drunkenneſs; and the authority is concluſive.

It is a queſtion of ſome importance, how far drunkenneſs is an excuſe for the crimes which the drunken perſon commits.

In the ſolution of this queſtion, we will firſt ſuppoſe the drunken perſon to be altogether deprived of moral agency, that is to ſay, of all reflection and foreſight. In this condition, it is evident, that he is no more capable of guilt than a madman; although, like him, he may be extremely miſchievous. The only guilt, with which he is chargeable, was incurred at the time when he voluntarily brought himſelf into this ſituation. And as every man is reſponſible for the conſequences which he foreſaw, or might have foreſeen, and for no other, this guilt will be in proportion to the probability of ſuch conſequences enſuing. From which principle reſults the following rule, viz. that the guilt of any action in a drunken man bears the ſame proportion to the guilt of the like action in a ſober man, that the probability of its being the conſequence of drunkenneſs bears to abſolute certainty. By virtue of this rule, thoſe vices, which are the *known* effect of drunkenneſs, either in general, or upon particular conſtitutions, are, in all, or in men of ſuch conſtitutions, nearly as criminal, as if committed with all their faculties and ſenſes about them.

If the privation of reaſon be only partial, the guilt will be of a mixt nature. For ſo much of his ſelf-government as the drunkard retains, he is as reſponſible then, as at any other time. He is entitled to no abatement, beyond the ſtrict proportion in which his moral faculties are impaired. Now I call the guilt of the crime, if a ſober man had committed it, the *whole* guilt. A perſon in the condition we deſcribe, incurs part of this at the inſtant of perpetration; and by bringing himſelf into ſuch a condition, incurred that fraction of the remaining part, which the danger of this conſequence was of an integral certainty. For the ſake of illuſtration, we are at liberty to ſuppoſe, that a man loſes half his moral faculties by drunkenneſs: this leaving him but half his reſponſibility, he incurs, when he commits the action, half of the whole guilt. We will alſo ſuppoſe that it was known beforehand, that it was an even chance, or half a certainty, that this crime would follow his getting drunk. This makes him chargeable with half of the remainder; ſo that altogether, he is reſponſible in three fourths of the guilt, which a ſober man would have incurred by the ſame action.

I do not mean that any real caſe can be reduced to numbers, or the calculation be ever made with arithmetical preciſion: but theſe are the principles, and this the rule, by which our general admeaſurement of the guilt of ſuch offences ſhould be regulated.

The appetite for intoxicating liquors appears to me to be almoſt always *acquired.* One proof of which is, that it is apt to return only at particular times and places; as after dinner, in the evening, on the market day, at the market town, in ſuch a company, at ſuch a tavern. And this may be the reaſon, that if a habit of drunkenneſs be ever overcome, it is upon ſome change of place, ſituation, company, or profeſſion. A man ſunk deep in a habit of drunkenneſs, will upon ſuch occaſions as theſe, when he finds himſelf looſened from the aſſociations which held him faſt, ſometimes make a plunge, and get out. In a matter of ſo great importance, it is well worth while, where it is in any degree practicable, to change our habitation and ſociety, for the ſake of the experiment.

Habits of drunkenneſs commonly take their riſe either from a fondneſs for and connexion with ſome company, or ſome companion, already addicted to this practice; which affords an almoſt irreſiſtible invitation to take a ſhare in the indulgences, which thoſe about us are enjoying with ſo much apparent reliſh and delight: or from want of regular employment, which is ſure to let in many ſuperfluous cravings and cuſtoms, and often this amongſt the reſt; or, laſtly, from grief or fatigue, both which ſtrongly ſolicit that relief which inebriating liquors adminiſter, and alſo furniſh a ſpecious excuſe for complying with the inclination. But the habit, when once ſet in, is continued by different motives from thoſe to which it owes its origin. Perſons addicted to exceſſive drinking ſuffer, in the intervals of ſobriety, and near the return of their accuſtomed indulgence, a faintneſs and oppreſſion *circa præcordia*, which it exceeds the ordinary patience of human nature to endure. This is uſually relieved for a ſhort time, by a repetition of the ſame exceſs: and to this relief, as to the removal of every long continued pain, they who have once experienced it, are urged almoſt beyond the power of reſiſtance. This is not all: as the liquor loſes its *ſtimulus*, the doſe muſt be increaſed, to reach the ſame pitch of elevation, or eaſe; which increaſe proportionably accelerates the progreſs of all the maladies that drunkenneſs brings on. Whoever reflects upon the violence of the craving in the advanced ſtages of the habit, and the fatal termination to which the gratification of it leads, will, the moment he perceives in himſelf the firſt ſymptoms of a growing inclination to intemperance, collect his reſolution to this point; or (what perhaps he will find his beſt ſecurity) arm himſelf with ſome peremptory rule, as to the times and quantity of his indulgences. I own myſelf a friend to the laying down of rules to ourſelves of this ſort, and rigidly abiding by them. They may be exclaimed againſt as ſtiff, but they are often ſalutary. Indefinite reſolutions of abſtemiouſneſs are apt to yield to *extraordinary* occaſions; and *extraordinary* occaſions to occur perpetually. Whereas, the ſtricter the rule is, the more tenacious we grow of it; and many a man will abſtain rather than break his rule, who would not eaſily be brought to exerciſe the ſame mortification from higher motives. Not to mention, that when our rule is once known, we are provided with an anſwer to every importunity.

There is a difference no doubt, between convivial intemperance, and that ſolitary ſottiſhneſs, which waits neither for company nor invitation. But the one, I am afraid, commonly ends in the other: and this laſt is the baſeſt degradation to which the faculties and dignity of human nature can be reduced.

Chapter III.

SUICIDE.

THERE is no ſubject in morality, in which the conſideration of *general conſequences* is more neceſſary than in this of ſuicide. Particular and extreme caſes of ſuicide may be imagined, and may ariſe, of which it would be difficult to aſſign the particular miſchief, or from that conſideration alone to demonſtrate the guilt. And theſe caſes have been the chief occaſion of confuſion and doubtfulneſs in the queſtion. Albeit this is no more, than what is ſometimes true of the moſt acknowledged vices. I could propoſe many poſſible caſes, even of murder, which, if they were detached from the general rule, and governed by their own particular conſequences alone, it would be no eaſy undertaking to prove criminal.

The true queſtion in the argument is no other than this—May every man who chooſes to deſtroy his life, innocently do ſo? Limit, and diſtinguiſh the ſubject as you can, it will come at laſt to this queſtion.

For, ſhall we ſay, that we are then only at liberty to commit ſuicide, when we find our continuance in life become uſeleſs to mankind? Any one, who pleaſes, may make himſelf uſeleſs; and melancholy minds are prone to think themſelves uſeleſs, when they really are not ſo. Suppoſe a law were promulged, allowing each private perſon to deſtroy every man he met, whoſe longer continuance in the world he judged to be *uſeleſs;* who would not condemn the latitude of ſuch a rule? Who does not perceive that it amounts to a permiſſion to commit murder at pleaſure? A ſimilar rule, regulating the rights over our own lives, would be capable of the ſame extenſion. Beſide which, no one is *uſeleſs* for the purpoſe of this plea, but he who has loſt every capacity and opportunity of being uſeful, together with the poſſibility of recovering any degree of either: which is a ſtate of ſuch complete deſtitution and deſpair, as cannot, I believe, be predicated of any man living.

Or rather, ſhall we ſay, that to depart voluntarily out of life, is lawful for thoſe alone, who leave none to lament their death? If this conſideration is to be taken into the account at all, the ſubject of debate will be, not whether there are any to ſorrow for us, but whether their ſorrow for our death will exceed that which we ſhould ſuffer by continuing to live. Now this is a compariſon of things ſo indeterminate in their nature, capable of ſo different a judgment, and concerning which the judgment will differ ſo much, according to the ſtate of the ſpirits, or the preſſure of any preſent anxiety, that it would vary little in hypochondriacal conſtitutions from an unqualified licence to commit ſuicide, whenever the diſtreſſes which men felt or fancied, roſe high enough to overcome the pain and dread of death. Men are never tempted to deſtroy themſelves, but when under the oppreſſion of ſome grievous uneaſineſs. The reſtrictions of the rule, therefore, ought to apply to theſe caſes. But what effect can we look for from a rule, which propoſes to weigh our own pain againſt that of another; the miſery that is felt, againſt that which is only conceived; and in ſo corrupt a balance as the party's own diſtempered imagination?

In like manner, whatever other rule you aſſign, it will ultimately bring us to an indiſcriminate toleration of ſuicide, in all caſes in which there is danger of its being committed.

It remains, therefore, to inquire what would be the effect of ſuch a toleration—evidently, the loſs of many lives to the community, of which ſome might be uſeful or important; the affliction of *many* families, and the conſternation of *all;* for mankind muſt live in continual alarm for the fate of their friends and deareſt relations, when the reſtraints of religion and morality are withdrawn; when every diſguſt, which is powerful enough to tempt men to ſuicide, ſhall be deemed ſufficient to juſtify it; and when the follies and vices, as well as the inevitable calamities of human life, ſo often make exiſtence a burthen.

A ſecond conſideration, and perfectly diſtinct from the former, is this. By continuing in the world, and in the exerciſe of thoſe virtues which remain within our power, we retain the opportunity of meliorating our condition in a future ſtate. This argument, it is true, does not in ſtrictneſs prove ſuicide to be a crime; but if it ſupply a motive to diſſuade us from committing it, it amounts to much the ſame thing. Now there is no condition in human life which is not capable of ſome virtue, active or paſſive. Even piety and reſignation under the ſufferings to which we are called, teſtify a truſt and acquieſcence in the divine counſels, more acceptable, perhaps, than the moſt proſtrate devotion; afford an edifying example to all who obſerve them, and may hope for a recompenſe among the moſt arduous of human virtues. Theſe qualities are always in the power of the miſerable; indeed of none but the miſerable.

The two conſiderations above ſtated, belong to all caſes of ſuicide whatever. Beſide which general reaſons, each caſe will be aggravated by its own proper and particular conſequences; by the duties that are deſerted; by the claims that are defrauded; by the loſs, affliction, or diſgrace, which our death, or the manner of it, cauſes to our family, kindred, or friends; by the occaſion we give to many to ſuſpect the ſincerity of our moral and religious profeſſions, and, together with ours, thoſe of all others; by the reproach we draw upon our order, calling, or ſect; in a word, by a great variety of evil conſequences, attending upon peculiar ſituations, with ſome or other of which every actual caſe of ſuicide is chargeable.

I refrain from the common topics of "deſerting our poſt," "throwing up our truſt," "ruſhing uncalled into the preſence of our Maker," with ſome others of the ſame ſort, not becauſe they are *common* (for that rather affords a preſumption in their favour) but becauſe I do not perceive in them much argument to which an anſwer may not eaſily be given.

Hitherto we have purſued upon the ſubject the light of nature alone, taking into the account, however, the expectation of a future exiſtence, without which our reaſoning upon this, as indeed all reaſoning upon moral queſtions, is vain. We proceed to inquire, whether any thing is to be met with in ſcripture which may add to the probability of the concluſions we have been endeavouring to ſupport. And here I acknowledge, that there is to be found neither any expreſs determination of the queſtion, nor ſufficient evidence to prove, that the caſe of ſuicide was in the contemplation of the law which prohibited murder. Any inference, therefore, which we deduce from ſcripture, can be ſuſtained only by conſtruction and implication; that is to ſay, although they, who were authorized to inſtruct mankind, have not decided a queſtion, which never, ſo far as appears to us, came before them; yet, I think, they have left enough to conſtitute a preſumption, how they would have decided it, had it been propoſed or thought of.

What occurs to this purpoſe is contained in the following obſervations:

1. Human life is ſpoken of as a *term* aſſigned or preſcribed to us. "Let us run with patience the race that is ſet before us." "I have finiſhed my courſe." "That I may finiſh my courſe with joy." "You have need of patience, that after ye have done the will of God, ye might receive the promiſes." Theſe expreſſions appear to me inconſiſtent with the opinion, that we are at liberty to determine the duration of our lives for ourſelves. If this were the caſe, with what propriety could life be called a race *that is ſet before us*, or, which is the ſame thing, *our courſe;* that is, the courſe ſet out, or appointed to us? The remaining quotation is equally ſtrong: "that after ye have done the will of God, ye might receive the promiſes." The moſt natural meaning that can be given to the words, "after ye have done the will of God," is, after ye have diſcharged the duties of life ſo long as God is pleaſed to continue you in it. According to which interpretation, the text militates ſtrongly againſt ſuicide; and they who reject this paraphraſe, will pleaſe to propoſe a better.

2. There is not one quality, which *Chriſt* and his Apoſtles inculcate upon their followers ſo often or ſo earneſtly, as that of patience under affliction. Now this virtue would have been in a great meaſure ſuperſeded, and the exhortations to it might have been ſpared, if the diſciples of his religion had been at liberty to quit the world, as ſoon as they grew weary of the ill uſage which they received in it. When the evils of life preſſed ſore, they were to look forward to a "far more exceeding and eternal weight of glory;" they were to receive them "as the chaſtening of the Lord," as intimations of his care and love: by theſe and the like reflections, they were to ſupport and improve themſelves under their ſufferings, but not a hint has any where eſcaped of ſeek-

ing relief in a voluntary death. The following text, in particular, ſtrongly combats all impatience of diſtreſs, of which the greateſt is that which prompts to acts of ſuicide: "Conſider him that endured ſuch contradiction of ſinners againſt himſelf, leſt ye be wearied and faint in your minds." I would offer my comment upon this paſſage in theſe two queries; 1ſt, whether a Chriſtian convert, who had been impelled by the continuance and urgency of his ſufferings, to deſtroy his own life, would not have been thought by the author of this text, "to have been weary," "to have fainted in his mind," to have fallen off from that example, which is here propoſed to the meditation of Chriſtians in diſtreſs? And yet, 2dly, whether ſuch an act would not have been attended with all the circumſtances of mitigation, which can excuſe or extenuate ſuicide at this day?

3. The *conduct* of the Apoſtles, and of the Chriſtians of the apoſtolic age, affords no obſcure indication of their ſentiments upon this point. They lived, we are ſure, in a confirmed perſuaſion of the exiſtence, as well as of the happineſs of a future ſtate. They experienced in this world every extremity of external injury and diſtreſs. To die was gain. The change which death brought with it was, in their expectation, infinitely beneficial. Yet it never, that we can find, entered into the intention of one of them, to haſten this change by an act of ſuicide: from which it is difficult to ſay what motive could have ſo univerſally withheld them, except an apprehenſion of ſome unlawfulneſs in the expedient.

Having ſtated what we have been able to collect, in oppoſition to the lawfulneſs of ſuicide, by way of direct proof, it ſeems unneceſſary to open a ſeparate controverſy with all the arguments which are made uſe of to defend it; which would only lead us into a repetition of what has been offered already. The following argument, however, being ſomewhat more artificial and impoſing than the reſt, as well as diſtinct from the general conſideration of the ſubject, cannot ſo properly be paſſed over. If we deny to the individual a right over his own life, it ſeems impoſſible, it is ſaid, to reconcile with the law of nature that right which the ſtate claims and exerciſes over the lives of its ſubjects, when it ordains or inflicts capital puniſhments. For this right, like all other juſt authority in the ſtate, can only be derived from the compact and virtual conſent of the citizens which compoſe the ſtate; and it ſeems ſelf-evident, if any principle in morality be ſo, that no one, by his conſent, can transfer to another a right which he does not poſſeſs himſelf. It will be equally difficult to account for the power of the ſtate to commit its ſubjects to the dangers of war, and to expoſe their lives without ſcruple in the field of battle; eſpecially in offenſive hoſtilities, in which the privileges of ſelf-defence cannot be pleaded with any appearance of truth; and ſtill more difficult to explain, how in ſuch, or in any circumſtances, prodigality of life can be a virtue, if the preſervation of it be a duty of our nature.

This whole reaſoning ſets out from one error, namely, that the ſtate acquires its right over the life of the ſubject from the ſubject's own conſent, as a part of what originally and perſonally belonged to himſelf, and which he has made over to his governors. The truth is, the ſtate derives this right, neither from the conſent of the ſubject, nor through the medium of that conſent, but, as I may ſay, immediately from the donation of the Deity. Finding that ſuch a power in the ſovereign of the community is expedient, if not neceſſary for the community itſelf, it is juſtly preſumed to be the will of God, that the ſovereign ſhould poſſeſs and exerciſe it. It is this *preſumption* which conſtitutes the right; it is the ſame indeed which conſtitutes every other; and if there were the like reaſons to authorize the preſumption in the caſe of private perſons, ſuicide would be as juſtifiable as war, or capital executions. But, until it can be ſhown, that the power over human life may be converted to the ſame advantage in the hands of individuals over their own, as in thoſe of the ſtate over the lives of its ſubjects, and that it may be entruſted with equal ſafety to both, there is no room for arguing from the exiſtence of ſuch a right in the latter, to the toleration of it in the former.

BOOK V.

Duties towards God.

Chapter I.

DIVISION OF THESE DUTIES.

IN one ſenſe, every duty is a Duty towards God, ſince it is his will which makes it a duty: but there are ſome duties, of which God is the object as well as the author: and theſe are peculiarly, and in a more appropriated ſenſe, called *Duties towards God.*

That ſilent piety, which conſiſts in a habit of tracing out the Creator's wiſdom and goodneſs in the objects around us, or in the hiſtory of his diſpenſations; of referring the bleſſings we enjoy to his bounty, and of reſorting in our diſtreſſes to his ſuccour, may poſſibly be more acceptable to the Deity, than any viſible expreſſions of devotion whatever. Yet theſe latter (which, although they may be excelled, are not ſuperſeded by the former) compoſe the only part of the ſubject which admits of direction or diſquiſition from a moraliſt.

Our duty towards God, ſo far as it is external, is divided into *worſhip* and *reverence.* God is the immediate object of both: and the difference between them is, that the one conſiſts in action, the other in forbearance. When we go to church on the Lord's day, led thither by a ſenſe of duty towards God, we perform an act of worſhip: when, from the ſame motive, we reſt in a journey upon that day, we diſcharge a duty of reverence.

Divine worſhip is made up of adoration, thankſgiving and prayer. But, as what we have to offer concerning the two former, may be obſerved of prayer, we ſhall make that the title of the following Chapters, and the direct ſubject of our conſideration.

Chapter II.

OF THE DUTY AND OF THE EFFICACY OF PRAYER, SO FAR AS THE SAME APPEAR FROM THE LIGHT OF NATURE.

WHEN one man deſires to obtain any thing of another, he betakes himſelf to entreaty: and this may be obſerved of mankind in all ages and countries of the world. Now what is univerſal, may be called natural; and it ſeems probable, that God, as our ſupreme governor, ſhould expect that towards himſelf, which, by a natural impulſe, or by the irreſiſtible order of our conſtitution, he has prompted us to pay to every other being on whom we depend.

The ſame may be ſaid of thankſgiving.

Prayer likewiſe is neceſſary to keep up in the minds of mankind a ſenſe of God's agency in the univerſe, and of their own dependency upon him.

Yet after all, the duty of prayer depends upon its efficacy: for I confeſs myſelf unable to conceive, how any man can pray, or be obliged to pray, who expects nothing from his prayers; but who is perſuaded at the time he utters his requeſt, that it cannot poſſibly produce the ſmalleſt impreſſion upon the Being to whom it is addreſſed, or advantage to himſelf. Now the efficacy of prayer imports, that we obtain ſomething in conſequence of praying, which we ſhould not have received without prayer; againſt all expectation of which, the following objection has been often and ſeriouſly alleged. "If it be moſt agreeable to perfect wiſdom and juſtice, that we ſhould receive what we deſire, God, as perfectly wiſe and juſt, will give it to us without aſking: if it be not agreeable to theſe attributes of his nature, our entreaties cannot move him to give it us; and it were impious to expect that they ſhould." In fewer words, thus; "If what we requeſt be fit for us, we ſhall have it without praying; if it be not fit for us, we cannot obtain it by praying." This objection admits but of one anſwer, namely, that it may be agreeable to perfect wiſdom, to grant that to our prayers, which it would not have been agreeable to the ſame wiſdom to have given us without praying for. But what virtue, you will aſk, is there in prayer, which ſhould make a favour conſiſtent with wiſdom, which would not have been ſo without it? To this queſtion, which contains the whole difficulty attending the ſubject, the following poſſibilities are offered in reply.

1. A favour granted to prayer may be more apt, on that very account, to produce good effects upon the perſon obliged. It may hold in the divine bounty, what experience has raiſed into a proverb in the collation of human benefits, that what is obtained without aſking, is oftentimes received without gratitude.

2. It may be conſiſtent with the wiſdom of the Deity to withhold his favours till they be aſked for, as an expedient to encourage devotion in his rational creation, in order thereby to keep up and circulate a knowledge and ſenſe of their dependency upon *him*.

3. Prayer has a natural tendency to amend the petitioner himſelf; and thus to bring him within the rules, which the wiſdom of the Deity has preſcribed to the diſpenſation of his favours.

If theſe, or any other aſſignable ſuppoſitions, ſerve to remove the apparent repugnancy between the ſucceſs of prayer and the character of the Deity, it is enough; for the queſtion with the petitioner is not from which, out of many motives, God may grant his petition, or in what particular manner he is moved by the ſupplications of his creatures; but whether it be conſiſtent with his nature to be moved at all, and whether there be any conceivable motives, which may diſpoſe the divine will to grant the petitioner what he wants, in conſequence of his praying for it. It is ſufficient for the petitioner that he gain his end. It is not neceſſary to devotion, perhaps not very conſiſtent with it, that the circuit of cauſes, by which his prayers prevail, ſhould be known to the petitioner, much leſs that they ſhould be preſent to his imagination at the time. All that is neceſſary is, that there be no impoſſibility apprehended in the matter.

Thus much muſt be conceded to the objection: that prayer cannot reaſonably be offered to God with all the ſame views, with which we oftentimes addreſs our entreaties to men (views which are not commonly or eaſily ſeparated from it) viz. to inform them of our wants or deſires; to teaſe them out by importunity; to work upon their indolence or compaſſion, in order to perſuade them to do what they ought to have done before, or ought not to do at all.

But ſuppoſe there exiſted a prince, who was known by his ſubjects to act, of his own accord, always and invariably for the beſt; the ſituation of a petitioner, who ſolicited a favour or pardon from ſuch a prince, would ſufficiently reſemble ours: and the queſtion with him, as with us, would be, whether, the character of the prince being conſidered, there remained any chance that he ſhould obtain from him by prayer, what he would not have received without it. I do not conceive, that the character of ſuch a prince would neceſſarily exclude the effect of his ſubjects' prayers; for when that prince reflected, that the earneſtneſs and humility of the ſupplication had generated in the ſuppliant a frame of mind, upon which the pardon or favour aſked would produce a permanent and active ſenſe of gratitude; that the granting of it to prayer would put others upon praying to him, and by that means preſerve the love and ſubmiſſion of his ſubjects, upon which love and ſubmiſſion, their own happineſs, as well as his glory, depended; that, beſide that the memory of the particular kindneſs would be heightened and prolonged by the anxiety with which it had been ſued for, prayer had in other reſpects ſo diſpoſed and prepared the mind of the petitioner, as to render capable of future ſervices him who before was unqualified for any: might not that prince, I ſay, although he proceeded upon no other conſiderations than the ſtrict rectitude and expediency of the meaſure, grant a favour or pardon to *this man*, which he did not grant to *another*, who was too proud, too lazy, or too buſy, too indifferent whether he received it or not, or too inſenſible of the ſovereign's abſolute power to give or to withhold it, ever to aſk for it; or even to the *philoſopher*, who, from an opinion of the fruitleſſneſs of all addreſſes to a prince of the character which he had formed to himſelf, refuſed in his own example and diſcouraged in others, all outward returns of gratitude, acknowledgements of duty, or application to the ſovereign's mercy or bounty; the diſuſe of which (ſeeing affections do not long ſubſiſt which are never expreſſed) was followed by a decay of loyalty and zeal amongſt his ſubjects, and threatened to end in a forgetfulneſs of his rights, and a contempt of his authority? Theſe, together with other aſſignable conſiderations, and ſome perhaps inſcrutable, and even inconceivable by the perſons upon whom his will was to be exerciſed, might paſs in the mind of the prince, and move his counſels; whilſt nothing in the mean time dwelt in the petitioner's thoughts, but a ſenſe of his own grief and wants; of the power and goodneſs from which alone he was to look for relief; and of his obligation to endeavour, by future obedience, to render that perſon propitious to his happineſs, in whoſe hands, and at the diſpoſal of whoſe mercy, he found himſelf to be.

The objection to prayer ſuppoſes, that a perfectly wiſe being muſt neceſſarily be inexorable: but where is the proof, that *inexorability* is any part of perfect wiſdom; eſpecially of that wiſdom, which is explained to conſiſt in bringing about the moſt beneficial ends by the wiſeſt means?

The objection likewiſe aſſumes another principle, which is attended with conſiderable difficulty and obſcurity, namely, that upon every occaſion there is *one*, and only *one* mode of acting *for the beſt;* and that the divine will is neceſſarily determined and confined to that mode: both which poſitions preſume a knowledge of univerſal nature, much beyond what we are capable of attaining. Indeed when we apply to the divine nature ſuch expreſſions as theſe, "God *muſt* always do what is right," "God *cannot*, from the moral perfection and neceſſity of his nature, act otherwiſe than for the beſt," we ought to apply them with much indeterminateneſs and reſerve; or rather, we ought to confeſs, that there is ſomething in the ſubject out of the reach of our apprehenſion: for in our apprehenſion, to be under a neceſſity of acting according to any rule, is inconſiſtent with free agency; and it makes no difference, which we can underſtand, whether the neceſſity be internal or external, or that the rule is the rule of perfect rectitude.

But efficacy is aſcribed to prayer without the proof, we are told, which can alone in ſuch a ſubject produce conviction, the confirmation of experience. Concerning the appeal to experience, I ſhall content myſelf with this remark, that if prayer were ſuffered to diſturb the order of ſecond cauſes appointed in the univerſe too much, or to produce its effect with the ſame regularity that they do, it would introduce a change into human affairs, which in ſome important reſpects would be evidently for the worſe. Who, for example, would labour, if his neceſſities could be ſupplied with equal certainty by prayer? How few would contain within any bounds of moderation thoſe paſſions and pleaſures, which at preſent are checked only by diſeaſe or the dread of it, if prayer would infallibly reſtore health? In ſhort, if the efficacy of prayer were ſo conſtant and obſervable as to be relied upon *before-hand*, it is eaſy to foreſee that the conduct of mankind would, in proportion to that reliance, become careleſs and diſorderly. It is poſſible in the nature of things, that our prayers may, in many inſtances, be efficacious, and yet our experience of their efficacy be dubious and obſcure. Therefore, if the light of nature inſtruct us by any other arguments to hope for effect from prayer; ſtill more, if the ſcriptures authorize theſe hopes by promiſes of acceptance; it ſeems not a ſufficient reaſon for calling in queſtion the reality of ſuch effects, that our obſervations of them are ambiguous: eſpecially ſince it appears probable, that this very ambiguity is neceſſary to the happineſs and ſafety of human life.

But ſome, whoſe objections do not exclude all prayer, are offended with the mode of prayer in uſe amongſt us, and with many of the ſubjects, which are almoſt univerſally introduced into public worſhip, and recommended to private devotion. To pray for particular favours by name, is to dictate, it has been ſaid, to divine wiſdom and goodneſs: to intercede for others, eſpecially for whole nations and empires, is ſtill worſe; it is to preſume that we poſſeſs ſuch an intereſt with the Deity, as to be able, by our applications, to bend the moſt important of his counſels; and that the happineſs of others, and even the proſperity of communities, is to depend upon this intereſt and upon our choice. Now how unequal ſoever our knowledge of the divine economy may be to the ſolution of this difficulty, which requires perhaps a comprehenſion of the entire plan, and of all the ends of God's moral government, to explain ſatisfactorily, we can underſtand one thing concerning it, that it is after all nothing more than the making of one man the inſtrument of happineſs and miſery to another; which is perfectly of a piece with the courſe and order that obtain, and which we muſt believe were intended to obtain, in human affairs. Why may we not be aſſiſted by the prayers of other men, who are beholden for our ſupport to their labour? Why may not our happineſs be made in ſome caſes to depend upon the interceſſion, as it certainly does in many, upon the good offices of our neighbours? The happineſs and miſery of great numbers we ſee oftentimes at the diſpoſal of one man's choice, or liable to be much affected by his conduct: what greater difficulty is there in ſuppoſing, that the prayers of an individual may avert a calamity from multitudes, or be accepted to the benefit of whole communities?

Chapter III.

OF THE DUTY AND EFFICACY OF PRAYER, AS REPRESENTED IN SCRIPTURE.

THE reader will have obſerved, that the reflections ſtated in the preceding Chapter, whatever truth and weight they may be allowed to contain, riſe many of them no higher, than to negative arguments in favour of the propriety of addreſſing prayer to God. To prove that the efficacy of prayer is not inconſiſtent with the attributes of the Deity, does not prove that prayers are actually efficacious; and in the want of that unequivocal teſtimony which experience alone could afford to this point, (but which we do not poſſeſs, and have ſeen good reaſon why we are not to expect) the light of nature leaves us to controverted probabilities, drawn from the impulſe by which all mankind have been almoſt univerſally prompted to devotion, and from ſome beneficial purpoſes, which, it is conceived, may be better anſwered by the audience of prayer, than by any other mode of communicating the ſame bleſſings.

The revelations, which we deem authentic, completely ſupply this defect of natural religion. They require prayer to God as a duty; and they contain poſitive aſſurances of its efficacy and acceptance. We could have no reaſonable motive for the exerciſe of prayer, without believing that it may avail to the relief of our wants. This belief can only be founded, either in a ſenſible experience of the effect of prayer, or in promiſes of acceptance ſignified by divine authority. Our knowledge would have come to us in the former way, leſs capable, indeed, of doubt, but ſubjected to the abuſes and inconveniences briefly deſcribed above: in the latter way, that is, by authorized ſignifications of God's general diſpoſition to hear and anſwer the devout ſupplications of his creatures, we are encouraged to pray, but not to place ſuch a dependence upon prayer, as might relax other obligations, or confound the order of events and human expectations.

The ſcriptures not only affirm the propriety of prayer in general, but furniſh precepts or examples which juſtify ſome topics and ſome modes of prayer that have been thought exceptionable. And as the whole ſubject reſts ſo much upon the foundation of ſcripture, I ſhall put down at length texts applicable to the five following heads; to the duty and efficacy of prayer in general; of prayer for particular favours by name; for public national bleſſings; of interceſſion for others; of the repetition of unſucceſsful prayers.

1. Texts enjoining prayer in general: "Aſk, and it ſhall be given you; ſeek, and ye ſhall find." "If ye, being evil, know how to give good gifts unto your children, how much more ſhall your Father, which is in heaven, give good things to them that aſk him?" "Watch ye, therefore, and *pray always*, that ye may be accounted worthy to eſcape all thoſe things that ſhall come to paſs, and to ſtand before the Son of Man." "Serving the Lord, rejoicing in hope, patient in tribulation, *continuing inſtant in pray-*

er." "Be careful for nothing, but in every thing *by prayer and ſupplication*, with thankſgiving let your requeſts be made known unto God." "I will, therefore, that men *pray every where*, lifting up holy hands without wrath and doubting." "*Pray without ceaſing.*" Matt. vii. 7. 11. Luke xxi. 36. Rom. xii. 12. Phil. iv. 6. 1 Theſſ. v. 17. 1 Tim. ii. 8. Add to theſe, that Chriſt's reproof of the oſtentation and prolixity of phariſaical prayers, and his recommendation to his diſciples of retirement and ſimplicity in theirs, together with his dictating a particular form of prayer, all preſuppoſe prayer to be an acceptable and availing ſervice.

2. Examples of prayer for particular favours by name: "For this thing (to wit, ſome bodily infirmity, which he calls a thorn given him in the fleſh) I beſought the Lord thrice that it might depart from me." "Night and day praying exceedingly, that we might *ſee your face*, and perfect that which is lacking in your faith." 2 Cor. xii. 8. 1 Theſſ. iii. 10.

3. Directions to pray for national or public bleſſings: "*Pray for the peace of Jeruſalem.*" "Aſk ye of the Lord rain, in the time of the latter rain; ſo the Lord ſhall make bright clouds, and give them ſhowers of rain, to every one graſs in the field." "I exhort, therefore, that firſt of all, ſupplications, prayers, interceſſions, and giving of thanks, be made for all men; for kings and for all that are in authority, that we may lead a quiet and peaceable life, in all godlineſs and honeſty; for this is good and acceptable in the ſight of God our Saviour." Pſalm cxxii. 6. Zech. x. i. 1 Tim. ii. 1, 2, 3.

4. Examples of interceſſion and exhortations to intercede for others: "And Moſes beſought the Lord his God, and ſaid, Lord, why doth thy wrath wax hot againſt thy people? Remember Abraham, Iſaac, and Iſrael, thy ſervants. And the Lord repented of the evil which he thought to do unto his people." "Peter therefore was kept in priſon, but prayer was made without ceaſing of the church unto

God *for him.*" "For God is my witneſs, that without ceaſing *I make mention of you always in my prayers.*" "Now I beſeech you, brethren, for the Lord Jeſus Chriſt's ſake, and for the love of the Spirit, that ye ſtrive together with me, in your *prayers for me.*" "Confeſs your faults one to another, and *pray for one another*, that ye may be healed: the effectual fervent prayer of the righteous man availeth much." Exod. xxxii. 11. Acts xii. 5. Rom. i. 9. xv. 30. James v. 16.

5. Declarations and examples authorizing the repetition of unſucceſsful prayers: "And he ſpoke a parable unto them, to this end, that men ought always to pray, and not to faint." "And he left them, and went away again, and prayed *the third time, ſaying the ſame words.*" "For this thing I beſought the Lord *thrice* that it might depart from me." Luke xviii. 1. Matt. xxvi. 44. 2. Cor. xii. 8.*

Chapter IV.

OF PRIVATE PRAYER, FAMILY PRAYER, AND PUBLIC WORSHIP.

CONCERNING theſe three deſcriptions of devotion, it is firſt of all to be obſerved, that each has its ſeparate and peculiar uſe; and therefore, that the exerciſe of one ſpecies of worſhip, however regular it be, does not ſuperſede, or diſpenſe with the obligation of either of the other two.

I. *Private Prayer* is recommended for the ſake of the following advantages:

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* The reformed churches of Chriſtendom, ſticking cloſe in this article to their guide, have laid aſide prayers for the dead, as authorized by no precept or precedent found in ſcripture. For the ſame reaſon they properly reject the invocation of ſaints; as alſo becauſe ſuch invocations ſuppoſe in the ſaints whom they addreſs a knowledge which can perceive what paſſes in different regions of the earth at the ſame time. And they deem it too much to take for granted, without the ſmalleſt intimation of ſuch a thing in ſcripture, that any created being poſſeſſes a faculty little ſhort of that omniſcience and omnipreſence which they aſcribe to the Deity.

Private wants cannot always be made the ſubjects of public prayer; but whatever reaſon there is for praying at all, there is the ſame for making the ſore and grief of each man's own heart the buſineſs of his application to God. This muſt be the office of private exerciſes of devotion, being imperfectly, if at all, practicable in any other.

Private prayer is generally more devout and earneſt than the ſhare we are capable of taking in joint acts of worſhip; becauſe it affords leiſure and opportunity for the circumſtantial recollection of thoſe perſonal wants, by the remembrance and ideas of which, the warmth and earneſtneſs of prayer are chiefly excited.

Private prayer, in proportion as it is uſually accompanied with more actual thought and reflection of the petitioner's own, has a greater tendency than other modes of devotion to revive and faſten upon the mind the general impreſſions of religion. Solitude powerfully aſſiſts this effect. When a man finds himſelf alone in communication with his Creator, his imagination becomes filled with a conflux of awful ideas concerning the univerſal agency, and inviſible preſence of that Being; concerning what is likely to become of himſelf; and of the ſuperlative importance of providing for the happineſs of his future exiſtence, by endeavours to pleaſe him who is the arbiter of his deſtiny; reflections which, whenever they gain admittance, for a ſeaſon, overwhelm all others; and leave, when they depart, a ſolemnity upon the thoughts that will ſeldom fail, in ſome degree, to affect the conduct of life.

Private prayer, thus recommended by its own propriety, and by advantages not attainable in any form of religious communion, receives a ſuperior ſanction from the authority and example of Chriſt. "When thou prayeſt, enter into thy cloſet; and when thou haſt ſhut thy door, pray to thy Father which is in ſecret; and thy Father which ſeeth in ſecret, ſhall reward thee openly." "And when he had ſent the multitudes away, he went up into a mountain *apart to pray.*" Matt. vi. 6. xiv. 23.

II. *Family Prayer.*

The peculiar uſe of family piety conſiſts in its influence upon ſervants, and the young members of a family, who want ſufficient ſerioufneſs and reflection to retire of their own accord to the exerciſe of private devotion, and whoſe attention you cannot eaſily command in public worſhip. The example alſo and authority of a father and maſter act in this way with the greateſt force; for his private prayers, to which his children and ſervants are not witneſſes, act not at all upon them as examples; and his attendance upon public worſhip they will readily impute to faſhion, to a care to preſerve appearances, to a concern for decency and character, and to many motives beſides a ſenſe of duty to God. Add to this, that forms of public worſhip, in proportion as they are more comprehenſive, are always leſs intereſting than family prayers; and that the ardour of devotion is better ſupported, and the ſympathy more eaſily propagated, through a ſmall aſſembly connected by the affections of domeſtic ſociety, than in the preſence of a mixed congregation.

III. *Public Worſhip.*

If the worſhip of God be a duty of religion, public worſhip is a neceſſary inſtitution; foraſmuch as without it, the greater part of mankind would exerciſe no religious worſhip at all.

Theſe aſſemblies afford alſo, at the ſame time, opportunities for moral and religious inſtruction to thoſe who otherwiſe would receive none. In all Proteſtant, and in moſt Chriſtian countries, the elements of natural religion, and the important parts of the evangelic hiſtory, are familiar to the loweſt of the people. This competent degree and general diffuſion of religious knowledge amongſt all orders of Chriſtians, which will appear a great thing when compared with the intellectual condition of barbarous nations, can fairly, I think, be aſcribed to no other cauſe than the regular eſtabliſhment of aſſemblies for divine worſhip; in which, either portions of ſcripture are recited and explained, or the principles of Chriſtian erudition are ſo conſtantly taught in ſermons, incorporated with liturgies, or expreſſed in extempore prayer, as to imprint, by the very repetition, ſome knowledge and memory of theſe ſubjects upon the moſt unqualified and careleſs hearer.

The two reaſons, above ſtated, bind all the members of a community to uphold public worſhip by their preſence and example, although the helps and opportunities which it affords may not be neceſſary to the devotion or edification of all; and to ſome may be uſeleſs: for it is eaſily foreſeen, how ſoon religious aſſemblies would fall into contempt and diſuſe, if that claſs of mankind, who are above ſeeking inſtruction in them, and want not that their own piety ſhould be aſſiſted by either forms or ſociety in devotion, were to withdraw their attendance; eſpecially when it is conſidered, that all who pleaſe are at liberty to rank themſelves of this claſs. This argument meets the only ſerious apology that can be made for the abſenting of ourſelves from public worſhip. "Surely (ſome will ſay) I may be excuſed from going to church, ſo long as I pray at home, and have no reaſon to doubt but that my prayers are as acceptable and efficacious in my cloſet, as in a cathedral; ſtill leſs can I think myſelf obliged to ſit out a tedious ſermon, in order to hear what is known already, what is better learnt from books, or ſuggeſted by meditation." They, whoſe qualifications and habits beſt ſupply to themſelves all the effect of public ordinances, will be the laſt to prefer this excuſe, when they advert to the *general conſequence* of ſetting up ſuch an exemption, as well as when they conſider the *turn* which is ſure to be given in the neighbourhood to their abſence from public worſhip. You ſtay from church, to employ the ſabbath at home in exerciſes and ſtudies ſuited to its proper buſineſs; your next neighbour ſtays from church, to ſpend the ſeventh day leſs religiouſly than he paſſed any of the ſix, in a ſleepy, ſtupid reſt, or at ſome rendezvous of drunkenneſs and debauchery, and yet thinks that he is only imitating you, becauſe you both agree in not going to church. The ſame conſideration ſhould overrule many ſmall ſcruples concerning the rigorous propriety of ſome things, which may be contained in the forms, or admitted into the adminiſtration of the public worſhip of our communion: for it ſeems impoſſible, that even "two or three ſhould be gathered together," in any act of ſocial worſhip, if each one require from the reſt an implicit ſubmiſſion to his objections; and if no man will attend upon a religious ſervice, which in any point contradicts his opinion of truth, or falls ſhort of his ideas of perfection.

Beſide the direct neceſſity of public worſhip to the greater part of every Chriſtian community (ſuppoſing worſhip at all to be a Chriſtian duty) there are other valuable advantages growing out of the uſe of religious aſſemblies, without being deſigned in the inſtitution, or thought of by the individuals who compoſe them.

1. Joining in prayer and praiſes to their common Creator and Governor has a ſenſible tendency to unite mankind together, and to cheriſh and enlarge the generous affections.

So many pathetic reflections are awakened by every exerciſe of ſocial devotion, that moſt men, I believe, carry away from public worſhip a better temper towards the reſt of mankind, than they brought with them. Sprung from the ſame extraction, preparing together for the period of all worldly diſtinctions, reminded of their mutual infirmities and common dependency, imploring and receiving ſupport and ſupplies from the ſame great Source of power and bounty, having all one intereſt to ſecure, one Lord to ſerve, one judgment, the ſupreme object to all of their hopes and fears, to look towards, it is hardly poſſible, in this poſition, to behold mankind as ſtrangers, competitors, or enemies; or not to regard them as children of the ſame family, aſſembled before their common Parent, and with ſome portion of the tenderneſs, which belongs to the moſt endearing of our domeſtic relations. It is not to be expected, that any ſingle effect of this kind ſhould be conſiderable or laſting; but the frequent return of ſuch ſentiments as the preſence of a devout congregation naturally ſuggeſts, will gradually melt down the ruggedneſs of many unkind paſſions, and may generate in time a permanent and productive benevolence.

2. Aſſemblies for the purpoſe of divine worſhip, placing men under impreſſions, by which they are taught to conſider their relation to the Deity, and to contemplate thoſe around them with a view to that relation, force upon their thoughts the natural equality of the human ſpecies, and thereby promote humility and condeſcenſion in the higheſt orders of the community, and inſpire the loweſt with a ſenſe of their rights. The diſtinctions of civil life are almoſt always inſiſted upon too much, and urged too far. Whatever therefore conduces to reſtore the level, by qualifying the diſpoſitions which grow out of great elevation or depreſſion of rank, improves the character on both ſides. Now things are made to appear little, by being placed beſide what is great. In which manner, ſuperiorities, that occupy the whole field of the imagination, will vaniſh, or ſhrink to their proper diminutiveneſs, when compared with the diſtance by which even the higheſt of men are removed from the Supreme Being: and this compariſon is naturally introduced by all acts of joint worſhip. If ever the poor man holds up his head, it is at church: if ever the rich man views him with reſpect, it is there: and bòth will be the better, and the public profited, the oftener they meet in a ſituation, in which the conſciouſneſs of dignity in the one is tempered and mitigated, and the ſpirit of the other erected and confirmed. We recommend nothing adverſe to ſubordinations, which are eſtabliſhed and neceſſary; but then it ſhould be remembered, that ſubordination itſelf is an evil, being an evil to the

ſubordinate, who are the majority, and therefore ought not to be carried a tittle beyond what the greater good, the peaceable government of the community, requires.

The public worſhip of Chriſtians is a duty of divine appointment. "Where two or three," ſays Chriſt, "are gathered together in my name, there am I in the midſt of them."* This invitation will want nothing of the force of a command with thoſe, who reſpect the perſon and authority from which it proceeds. Again, in the Epiſtle to the *Hebrews*, "not forſaking the aſſembling of ourſelves together, as the manner of ſome is;"† which reproof ſeems as applicable to the deſertion of our public worſhip at this day, as to the forſaking the religious aſſemblies of Chriſtians in the age of the Apoſtle. Independently of theſe paſſages of ſcripture, a diſciple of Chriſtianity will hardly think himſelf at liberty to diſpute a practice ſet on foot by the inſpired preachers of his religion, coeval with its inſtitution, and retained by every ſect into which it has been ſince divided.

Chapter V.

FORMS OF PRAYER IN PUBLIC WORSHIP.

LITURGIES, or preconcerted forms of public devotion, being neither enjoined in ſcripture, nor forbidden, there can be no good reaſon either for receiving or rejecting them, but that of expediency; which expediency is to be gathered from a compariſon of the advantages and diſadvantages attending upon this mode of worſhip, with thoſe which uſually accompany extemporary prayer.

The advantages of a liturgy are theſe:

1. That it prevents abſurd, extravagant, or impious addreſſes to God, which, in an order of men ſo numerous as the ſacerdotal, the folly and enthuſiaſm of many muſt always be in danger of producing,

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* Matt. xviii. 20.

† Heb. x. 25.

where the conduct of the public worſhip is entruſted, without reſtraint or aſſiſtance, to the diſcretion and abilities of the afficiating miniſter.

2. That it prevents the *confuſion* of extemporary prayer, in which the congregation being ignorant of each petition before they hear it, and having little or no time to join in it after they have heard it, are confounded between their attention to the miniſter, and to their own devotion. The devotion of the hearer is neceſſarily ſuſpended, until a petition be concluded; and before he can aſſent to it, or properly adopt it, that is, before he can addreſs the ſame requeſt to God for himſelf, his attention is called off to keep pace with what ſucceeds. Add to this, that the mind of the hearer is held in continual expectation, and detained from its proper buſineſs by the very novelty with which it is gratified. A congregation may be pleaſed and affected with the prayers and devotion of their miniſter, without joining in them, in like manner as an audience oftentimes are with the repreſentation of devotion upon the ſtage, who, nevertheleſs, come away without being conſcious of having exerciſed any act of devotion themſelves. *Joint* prayer, which amongſt all denominations of Chriſtians is the declared deſign of "coming together," is prayer in which they all *join;* and not that which one alone in the congregation conceives and delivers, and of which the reſt are merely hearers. This objection ſeems fundamental, and holds even where the miniſter's office is diſcharged with every poſſible advantage and accompliſhment. The labouring recollection and embarraſſed or tumultuous delivery of many extempore ſpeakers, form an additional objection to this mode of public worſhip; for theſe imperfections are very general, and give great pain to the ſerious part of a congregation, as well as afford a profane diverſion to the levity of the other part.

Theſe advantages of a liturgy are connected with two principal inconveniencies; firſt, that forms of prayer compoſed in one age, become unfit for another, by the unavoidable change of language, circumſtances, and opinions; ſecondly, that the perpetual repetition of the ſame form of words produce wearineſs and inattentiveneſs in the congregation. However, both theſe inconveniencies are, in their nature, vincible. Occaſional reviſions of a liturgy may obviate the firſt; and devotion will ſupply a remedy for the ſecond: or they may both ſubſiſt in a conſiderable degree, and yet be outweighed by the objections which are inſeparable from extemporary prayer.

The Lord's prayer is a precedent, as well as a pattern for forms of prayer. Our Lord appears, if not to have preſcribed, at leaſt to have authorized the uſe of fixed forms, when he complied with the requeſt of the diſciple who ſaid unto him, "Lord, teach us to pray, as John alſo taught his diſciples." Luke xi. 1.

The properties required in a public liturgy are, that it be compendious; that it expreſs juſt conceptions of the divine attributes; that it recite ſuch wants as a congregation are likely to feel, and no other; and that it contain as few controverted propoſitions as poſſible.

I. That it be compendious.

It were no difficult taſk to contract the liturgies of moſt churches into half their preſent compaſs, and yet retain every diſtinct petition, as well as the ſubſtance of every ſentiment, which can be found in them. But brevity may be ſtudied too much. The compoſer of a liturgy muſt not ſit down to his work with a hope, that the devotion of the congregation will be uniformly ſuſtained throughout, or that every part will be attended to by every hearer. If this could be depended upon, a very ſhort ſervice would be ſufficient for every purpoſe that can be anſwered or deſigned by ſocial worſhip: but ſeeing the attention of moſt men is apt to wander and return at intervals, and by ſtarts, he will admit a certain degree of amplification and repetition, of diverſity of expreſſion upon the ſame ſubject, and variety of phraſe and form, with little addition to the ſenſe, to the end that the attention which has been ſlumbering or abſent during one part of the ſervice, may be excited and recalled by another; and the aſſembly kept together until it may reaſonably be preſumed, that the moſt heedleſs and inadvertent have performed ſome act of devotion, and the moſt deſultory attention been caught by ſome part or other of the public ſervice. On the other hand, the too great length of church ſervices is more unfavourable to piety, than almoſt any fault of compoſition can be. It begets in many an early and unconquerable diſlike to the public worſhip of their country or communion. They come to church ſeldom; and enter the doors when they do come, under the apprehenſion of a tedious attendance, which they prepare for at firſt, or ſoon after relieve, by compoſing themſelves to a drowſy forgetfulneſs of the place and duty, or by ſending abroad their thoughts in ſearch of more amuſing occupation. Although there may be ſome few of a diſpoſition not to be wearied with religious exercifes, yet where a ritual is prolix, and the celebration of divine ſervice long, no effect is in general to be looked for, but that indolence will find in it an excuſe, and piety be diſconcerted by impatience.

The length and repetitions, complained of in our liturgy, are not ſo much the fault of the compilers as the effect of uniting into *one* ſervice, what was originally, but with very little regard to the conveniency of the people, diſtributed into *three*. Notwithſtanding that dread of innovations in religion, which ſeems to have become the *panic* of the age, few, I ſhould ſuppoſe, would be diſpleaſed with ſuch omiſſions, abridgments, or change in the arrangement, as the combination of ſeparate ſervices muſt neceſſarily require, even ſuppoſing each to have been faultleſs in itſelf. If, together with theſe alterations, the Epiſtles and Goſpels, and Collects which precede them, were compoſed and ſelected with more regard to unity of ſubject and deſign; and the Pſalms and Leſſons, either left to the choice of the miniſter, or better accommodated to the capacity of the audience, and the edification of modern life; the church of *England* would be in poſſeſſion of a liturgy, in which thoſe who aſſent to her doctrines would have little to blame, and the moſt diſſatisfied muſt acknowledge many beauties. The ſtyle throughout is excellent; calm, without coldneſs; and though every where ſedate, oftentimes affecting. The pauſes in the ſervice are diſpoſed at proper intervals. The tranſitions from one office of devotion to another, from confeſſion to prayer, from prayer to thankſgiving, from thankſgiving to "hearing of the word," are contrived, like ſcenes in the drama, to ſupply the mind with a ſucceſſion of diverſified engagements. As much variety is introduced alſo in the form of praying as this kind of compoſition ſeems capable of admitting. The prayer at one time is continued; at another, broken by reſponſes, or caſt into ſhort alternate ejaculations; and ſometimes the congregation are called upon to take their ſhare in the ſervice, by being left to complete a ſentence which the miniſter had begun. The enumeration of human wants and ſufferings in the litany is almoſt complete. A Chriſtian petitioner can have few things to aſk of God, or to deprecate, which he will not find there expreſſed, and for the moſt part with inimitable tenderneſs and ſimplicity.

II. That it expreſs juſt conceptions of the divine attributes.

This is an article in which no care can be too great. The popular notions of God are formed, in a great meaſure, from the accounts which the people receive of his nature and character in their religious aſſemblies. An error here becomes the error of multitudes: and as it is a ſubject in which almoſt every opinion leads the way to ſome practical conſequence, the purity or depravation of public manners will be affected, amongſt other cauſes, by the truth or corruption of the public forms of worſhip.

III. That it recite ſuch wants as the congregation are likely to feel, and no other.

Of forms of prayer, which offend not egregiouſly, againſt truth and decency, that has the moſt merit, which is beſt calculated to keep alive the devotion of the aſſembly. It were to be wiſhed, therefore, that every part of a liturgy were perſonally applicable to every individual in the congregation; and that nothing were introduced to interrupt the paſſion, or damp a flame which it is not eaſy to rekindle. Upon this principle, the *ſtate prayers* in our liturgy ſhould be fewer and ſhorter. Whatever may be pretended, the congregation do not feel that concern in the ſubject of theſe prayers, which muſt be felt, or ever prayer be made to God with earneſtneſs. The *ſtate ſtyle* likewiſe ſeems unſeaſonably introduced into theſe prayers, as ill according with that annihilation of human greatneſs, of which every act that carries the mind to God preſents the idea.

IV. That it contain as few controverted propoſitions as poſſible.

We allow to each church the truth of its peculiar tenets, and all the importance which zeal can aſcribe to them. We diſpute not here the right or the expediency of framing creeds or of impoſing ſubſcriptions. But why ſhould every poſition which a church maintains be woven with ſo much induſtry into her forms of public worſhip? Some are offended, and ſome are excluded: this is an evil in itſelf, at leaſt to *them:* and what advantage or ſatisfaction can be derived to the *reſt*, from the ſeparation of their brethren, it is difficult to imagine; unleſs it were a duty, to publiſh our ſyſtem of polemic divinity, under the name of making confeſſion of our faith every time we worſhip God; or a ſin, to agree in religious exerciſes with thoſe, from whom we differ in ſome religious opinions. Indeed, where one man thinks it his duty conſtantly to worſhip a being, whom another cannot with the aſſent of his conſcience, permit himſelf to worſhip at all, there ſeems to be no place for comprehenſion, or any expedient left, but a quiet ſeceſſion. All other differences may be compromiſed by ſilence. If ſects and ſchiſms be an evil, they are as much to be avoided by one ſide as the other. If ſectaries are blamed for taking unneceſſary offence, eſtabliſhed churches are no leſs culpable for unneceſſarily giving it: they are bound at leaſt to produce a command, or a reaſon of equivalent utility, for ſhutting out any from their communion, by mixing with divine worſhip doctrines, which, whether true or falſe, are unconnected, in their nature, with devotion.

Chapter VI.

OF THE USE OF SABBATICAL INSTITUTIONS.

AN aſſembly cannot be collected, unleſs the time of aſſembling be fixed and known before-hand; and if the deſign of the aſſembly require that it be held frequently, it is eaſieſt that it ſhould return at ſtated intervals. This produces a neceſſity of appropriating ſet ſeaſons to the ſocial offices of religion. It is alſo highly convenient, that the *ſame* ſeaſons be obſerved throughout the country, that all may be employed, or all at leiſure together: for, if the receſs from worldly occupation be not general, one man's buſineſs will perpetually interfere with another man's devotion; the buyer will be calling at the ſhop when the ſeller is gone to church. This part, therefore, of the religious diſtinction of ſeaſons, namely, a general intermiſſion of labour and buſineſs during times previouſly ſet apart for the exerciſe of public worſhip, is founded in the reaſons which make public worſhip itſelf a duty. But the celebration of divine ſervice never occupies the whole day. What remains, therefore, of Sunday, beſide the part of it employed at church, muſt be conſidered as a mere reſt from the ordinary occupations of civil life; and he who would defend the inſtitution, as it is required by law to be obſerved in Chriſtian countries, unleſs he can produce a command for a *Chriſtian ſabbath*, muſt point out the uſes of it in that view.

Firſt, then, that interval of relaxation which Sunday affords to the laborious part of mankind, contributes greatly to the comfort and ſatisfaction of their lives, both as it refreſhes them for the time, and as it relieves their ſix day's labour by the proſpect of a day of reſt always approaching; which could not be ſaid of *caſual* indulgences of leiſure and reſt, even were they more frequent than there is reaſon to expect they would be, if left to the diſcretion or humanity of intereſted taſk-maſters. To this difference it may be added, that holidays, which come ſeldom and unexpected, are unprovided, when they do come, with any duty or employment; and the manner of ſpending them being regulated by no public decency or eſtabliſhed uſage, they are commonly conſumed in rude, if not criminal paſtimes, in ſtupid ſloth or brutiſh intemperance. Whoever conſiders how much ſabbatical inſtitutions conduce, in this reſpect, to the happineſs and civilization of the labouring claſſes of mankind, and reflects how great a majority of the human ſpecies theſe claſſes compoſe, will acknowledge the utility, whatever he may believe of the origin, of this diſtinction; and will, conſequently, perceive it to be every man's duty to uphold the obſervation of Sunday, when once eſtabliſhed, let the eſtabliſhment have proceeded from whom or from what authority it will.

Nor is there any thing loſt to the community by the intermiſſion of public induſtry one day in the week. For in countries tolerably advanced in population and the arts of civil life, there is always enough of human labour, and to ſpare. The difficulty is not ſo much to procure, as to employ it. The addition of the ſeventh day's labour to that of the other ſix would have no other effect than to reduce the price. The labourer himſelf, who deſerved and ſuffered moſt by the change, would gain nothing.

2. Sunday, by ſuſpending many public diverſions, and the ordinary rotation of employment, leaves to men of all ranks and profeſſions ſufficient leiſure, and

not more than what is ſufficient, both for the external offices of Chriſtianity, and the retired, but equally neceſſary duties of religious meditation and inquiry. It is true, that many do not convert their leiſure to this purpoſe ; but it is of moment, and is all which a public conſtitution can effect, that to every one be allowed the opportunity.

3. They whoſe humanity embraces the whole ſenſitive creation, will eſteem it no inconſiderable recommendation of a weekly return of public reſt, that it affords a reſpite to the toil of brutes. Nor can we omit to recount this amongſt the uſes, which the divine Founder of the *Jewiſh* ſabbath expreſsly appointed a law of the inſtitution.

We admit, that none of theſe reaſons ſhow why Sunday ſhould be preferred to any other day in the week, or one day in ſeven to one day in ſix or eight : but theſe points, which in their nature are of arbitrary determination, being eſtabliſhed to our hands, our obligation applies to the ſubſiſting eſtabliſhment, ſo long as we confeſs, that ſome ſuch inſtitution is neceſſary, and are neither able, nor attempt to ſubſtitute any other in its place.

Chapter VII.

OF THE SCRIPTURE ACCOUNT OF SABBATICAL INSTITUTIONS.

THE ſubject, ſo far as it makes any part of Chriſtian morality, is contained in two queſtions :

I. Whether the command, by which the *Jewiſh* ſabbath was inſtituted, extend to Chriſtians ?

II. Whether any new command was delivered by Chriſt ; or any other day ſubſtituted in the place of the *Jewiſh* ſabbath by the authority or example of his Apoſtles ?

In treating of the firſt queſtion, it will be neceſſary to collect the accounts, which are preſerved of the inſtitution in the *Jewiſh* hiſtory ; for the ſeeing theſe accounts together, and in one point of view, will be the beſt preparation for the diſcuſſing or judging of any arguments on one ſide or the other.

In the ſecond chapter of *Geneſis*, the hiſtorian having concluded his account of the ſix day's creation, proceeds thus: "And on the ſeventh day God ended his work which he had made; and he reſted on the ſeventh day from all his work which he had made; and God *bleſſed* the ſeventh day, and *ſanctified* it, becauſe that in it he had reſted from all his work which God created and made." After this we hear no more of the ſabbath, or of the ſeventh day, as in any manner diſtinguiſhed from the other ſix, until the hiſtory brings us down to the ſojourning of the *Jews* in the wilderneſs, when the following remarkable paſſage occurs. Upon the complaint of the people for want of food, God was pleaſed to provide for their relief by a miraculous ſupply of manna, which was found every morning upon the ground about the camp; "and they gathered it every morning, every man according to his eating; and when the ſun waxed hot, it melted: and it came to paſs, that on the ſixth day they gathered twice as much bread, two omers for one man: and all the rulers of the congregation came and told *Moſes*; and he ſaid unto them, this is that which the Lord hath ſaid, *to-morrow is the reſt of the holy ſabbath unto the Lord*; bake that which ye will bake to-day, and ſeethe that ye will ſeethe, and that which remaineth over lay up for you, to be kept until the morning; and they laid it up till the morning, as *Moſes* bade, and it did not ſtink" (as it had done before, when ſome of them left it till the morning) "neither was there any worm therein. And *Moſes* ſaid, Eat that to-day; *for to-day is a ſabbath unto the Lord:* to-day ye ſhall not find it in the field. Six days ye ſhall gather it, but on the ſeventh day, which is the ſabbath, in it there ſhall be none. And it came to paſs that there went out ſome of the people on the ſeventh day for to gather, and they found none. And the Lord ſaid unto *Moſes*, how long refuſe ye to keep my commandments and my laws? See, for *that* *the Lord hath given you the ſabbath*, therefore he giveth you on the ſixth day the bread of two days; abide ye every man in his place; let no man go out of his place on the ſeventh day: ſo the people reſted on the ſeventh day." *Exodus* xvi.

Not long after this, the ſabbath, as is well known, was eſtabliſhed with great ſolemnity in the fourth commandment.

Now, in my opinion, the tranſaction in the wilderneſs, above recited, was the firſt actual inſtitution of the ſabbath. For, if the ſabbath had been inſtituted at the time of the creation, as the words in Geneſis may ſeem at firſt ſight to import, and if it had been obſerved all along, from that time to the departure of the Jews out of Egypt, a period of about two thouſand five hundred years, it appears unaccountable, that no mention of it, no occaſion of even the obſcureſt alluſion to it, ſhould occur either in the general hiſtory of the world before the call of Abraham, which contains, we admit, only a few memoirs of its early ages, and thoſe extremely abridged; or, which is more to be wondered at, in that of the lives of the three firſt Jewiſh patriarchs, which, in many parts of the account, is ſufficiently circumſtantial and domeſtic. Nor is there, in the paſſage above quoted from the ſixteenth chapter of Exodus, any intimation that the ſabbath, then appointed to be obſerved, was only the revival of an ancient inſtitution, which had been neglected, forgotten, or ſuſpended; nor is any ſuch neglect imputed either to the inhabitants of the old world, or to any part of the family of Noah; nor, laſtly, is any permiſſion recorded to diſpenſe with the inſtitution during the captivity of the Jews in Egypt, or on any other public emergency.

The paſſage in the ſecond chapter of Geneſis, which creates the whole controverſy upon the ſubject, is not inconſiſtent with this opinion; for as the ſeventh day was erected into a ſabbath, on account of God's reſting upon that day from the work of the creation, it was natural enough for the hiſtorian, when he had related the hiſtory of the creation, and of God's ceaſing from it on the ſeventh day, to add, "and God bleſſed the ſeventh day, and ſanctified it, becauſe that on it he had reſted from all his work which God created and made;" although the bleſſing and ſanctification, i.e. the religious diſtinction and appropriation of that day, were not actually made till many ages afterwards. The words do not aſſert, that God *then* "bleſſed" and "ſanctified" the ſeventh day, but that he bleſſed and ſanctified it *for that reaſon;* and if any aſk why the ſabbath, or ſanctification of the ſeventh day, was *then* mentioned, if it was not *then* appointed, the anſwer is at hand; the order of connexion, and not of time, introduced the mention of the ſabbath, in the hiſtory of the ſubject which it was ordained to commemorate.

This interpretation is ſtrongly ſupported by a paſſage in the prophet *Ezekiel*, where the ſabbath is plainly ſpoken of as *given*, and what elſe can that mean, but as *firſt inſtituted*, in the wilderneſs? "Wherefore I cauſed them to go forth out of the land of Egypt, and brought them into the wilderneſs; and I gave them my ſtatutes, and ſhewed them my judgments, which if a man do, he ſhall even live in them: moreover alſo *I gave them my ſabbaths*, to be a ſign between me and them, that they might know that I am the Lord that ſanctify them." Ezek. xx. 10, 11, 12.

Nehemiah alſo recounts the promulgation of the ſabbatic law amongſt the tranſactions in the wilderneſs; which ſupplies another conſiderable argument in aid of our opinion: "Moreover thou leddeſt them in the day by a cloudy pillar, and in the night by a pillar of fire to give them light in the way wherein they ſhould go. Thou cameſt down alſo upon Mount *Sinai*, and ſpaked with them from heaven, and gaveſt them right judgments and true laws, good ſtatutes and commandments, *and madeſt known unto them thy holy ſabbath*, and commandedſt them precepts, ſtatutes and laws, by the hand of *Moſes* thy ſervant, and gaveſt them bread from heaven for their hunger, and broughteſt forth water for them out of the rock."* *Neh.* ix. 12.

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* From the mention of the ſabbath in ſo cloſe a connexion with the deſcent of God upon Mount *Sinai*, and the delivery of the law from thence, one would

If it be inquired, what duties were appointed for the *Jewiſh* ſabbath, and under what penalties and in what manner it was obſerved amongſt the ancient *Jews*; we find that, by the fourth commandment, a ſtrict ceſſation from work was enjoined, not only upon *Jews* by birth, or religious profeſſion, but upon all who reſided within the limits of the *Jewiſh* ſtate; that the ſame was to be permitted to their ſlaves and to their cattle: that this reſt was not to be violated under pain of death: "Whoſoever doeth any work in the ſabbath day, he ſhall ſurely be put to death." Ex. xxxi. 15. Beſide which the ſeventh day was to be ſolemnized by double ſacrifices in the temple. "And on the ſabbath day *two* lambs of the firſt year without ſpot, and two tenth deals of flower for a meat offering, mingled with oil, and the drink offering thereof; this is the burnt offering of every ſabbath beſide the continual burnt offering and his drink offering." Numb. xxviii. 9, 10. Alſo *holy convocations*, which mean, we preſume, aſſemblies for the purpoſe of public worſhip, or religious inſtruction, were directed to be held on the ſabbath day; "the ſeventh day is a ſabbath of reſt, and holy convocation." Lev. xxiii. 3.

And accordingly we read, that the ſabbath was in fact obſerved among the Jews, by a ſcrupulous abſtinence from every thing which by any poſſible conſtruction, could be deemed labour; as from dreſſing meat, from travelling beyond a ſabbath day's journey, or about a ſingle mile. In the *Maccabean* wars, they ſuffered a thouſand of their number to be ſlain, rather than do any thing in their own defence on the ſabbath day. In the final ſiege of Jeruſalem, after they had ſo far overcome their ſcruples, as to defend their perſons when attacked, they refuſed any operation on the ſabbath day, by which they might have

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be inclined to believe, that *Nehemiah* referred ſolely to the fourth commandment. But the fourth commandment certainly did not firſt make known the ſabbath. And it is apparent that *Nehemiah* obſerved not the order of events, for he ſpeaks of what paſſed upon Mount *Sinai*, before he mentions the miraculous ſupplies of bread and water, though the *Jews* did not arrive at Mount *Sinai*, till ſome time after both theſe miracles were wrought.

interrupted the enemy in filling up the trench. After the eſtabliſhment of ſynagogues (of the origin of which we have no account) it was the cuſtom to aſſemble in them upon the ſabbath day, for the purpoſe of hearing the law rehearſed and explained, and for the exerciſe, it is probable, of public devotion. "For *Moſes* of old time hath in every city them that preach him, *being read in the ſynagogues every ſabbath day.*" The ſeventh day is Saturday; and agreeable to the *Jewiſh* way of computing the day, the ſabbath held from ſix o'clock on the Friday evening, to ſix o'clock on Saturday evening.——Theſe obſervations being premiſed, we approach the main queſtion, Whether the command, by which the Jewiſh ſabbath was inſtituted, extend to us?

If the divine command was actually delivered at the creation, it was addreſſed, no doubt, to the whole human ſpecies alike, and continues, unleſs repealed by ſome ſubſequent revelation, binding upon all who come to the knowledge of it. If the command was publiſhed for the firſt time in the wilderneſs, then it was immediately directed to the Jewiſh people alone; and ſomething farther, either in the ſubject, or circumſtances of the command, will be neceſſary to ſhow, that it was deſigned for any other. It is on this account, that the queſtion concerning the date of the inſtitution was firſt to be conſidered. The former opinion precludes all debate about the extent of the obligation: the latter admits, and, *primâ facie*, induces a belief, that the ſabbath ought to be conſidered as part of the peculiar law of the Jewiſh policy.

Which belief receives great confirmation from the following arguments:

The ſabbath is deſcribed as a ſign between God and the people of Iſrael: "Wherefore the children of Iſrael ſhall keep the ſabbath, to obſerve the ſabbath throughout their generations, for a perpetual covenant; it *is a ſign between me and the children of Iſrael forever.*" Exod. xxxi. 16, 17. Again, "And I gave them my ſtatutes, and ſhewed them my judgments, which, if a man do, he ſhall even live in them; *moreover alſo I gave them my ſabbaths to be a ſign between me and them*, that they might know that I am the Lord that ſanctify them." Ezek. xx. 12. Now it does not ſeem eaſy to underſtand how the ſabbath could be a *ſign* between God and the people of Iſrael, unleſs the obſervance of it was peculiar to that people, and deſigned to be ſo.

The diſtinction of the ſabbath is, in its nature, as much a poſitive ceremonial inſtitution, as that of many other ſeaſons which were appointed by the levitical law to be kept holy, and to be obſerved by a ſtrict reſt; as the firſt and ſeventh days of unleavened bread; the feaſt of pentecoſt; the feaſt of tabernacles; and in the twenty-third chapter of Exodus the ſabbath and theſe are recited together.

If the command by which the ſabbath was inſtituted be binding upon Chriſtians, it muſt be binding as to the day, the duties, and the penalty; in none of which it is received.

The obſervance of the ſabbath was not one of the articles enjoined by the Apoſtles, in the fifteenth chapter of Acts, upon them, "which, from among the Gentiles, were turned unto God."

St. Paul evidently appears to have conſidered the ſabbath as part of the Jewiſh ritual, and not obligatory upon Chriſtians as ſuch: "Let no man therefore judge you in meat or in drink, or in reſpect of an holy day, or of the new moon, or *of the ſabbath days*, which are a ſhadow of things to come, but the body is of Chriſt." Col. ii. 16, 17.

I am aware of only two objections which can be oppoſed to the force of theſe arguments: one is, that the reaſon aſſigned in the fourth commandment for hallowing the ſeventh day, viz. "becauſe God reſted on the ſeventh day from the work of the creation," is a reaſon which pertains to all mankind; the other, that the command, which enjoins the obſervance of the ſabbath, is inſerted in the decalogue, of which all the other precepts and prohibitions are of moral and univerſal obligation.

Upon the firſt objection it may be remarked, that although in Exodus the commandment is founded upon God's reſt from the creation, in Deuteronomy the commandment is repeated with a reference to a different event: "Six days ſhalt thou labour, and do all thy work; but the ſeventh day is the ſabbath of the Lord thy God: in it thou ſhalt not do any work, thou, nor thy ſon, nor thy daughter, nor thy man-ſervant, nor thy maid-ſervant, nor thine ox, nor thine aſs, nor any of thy cattle, nor the ſtranger that is within thy gates; that thy man-ſervant and thy maid-ſervant may reſt as well as thou; and remember that thou waſt a ſervant in the land of Egypt, and that the Lord thy God brought thee out thence, through a mighty hand, and by a ſtretched out arm; *therefore*, the Lord thy God commanded thee to keep the ſabbath day." It is farther obſervable, that God's reſt from the creation is propoſed, as the reaſon of the inſtitution, even where the inſtitution itſelf is ſpoken of as peculiar to the Jews;—"Wherefore the children of Iſrael ſhall keep the ſabbath, to obſerve the ſabbath throughout their generations, for a perpetual covenant: it is a ſign between me and the children of Iſrael forever; *for* in ſix days the Lord made heaven and earth, and on the ſeventh day he reſted and was refreſhed." The truth is, theſe different reaſons were aſſigned to account for different circumſtances in the command. If a Jew inquired, why the *ſeventh day* was ſanctified rather than the ſixth or eighth, his law told him, becauſe God reſted on the *ſeventh day* from the creation. If he aſked, why was the ſame reſt indulged to *ſlaves*, his law bid him remember, that he alſo was a *ſlave* in the land of Egypt; and, "that the Lord his God brought him out thence." In this view, the two reaſons are perfectly compatible with each other, and with a third end of the inſtitution, its being a *ſign* between God and the people of Iſrael; but in this view they determine nothing concerning the extent of the obligation. If the reaſon by its proper energy had conſtituted a natural obligation, or if it had been mentioned with a view to the extent of the obligation, we ſhould ſubmit to the concluſion, that all were comprehended by the command, who are concerned in the reaſon. But the ſabbatic reſt being a duty which reſults from the ordination and authority of a poſitive law, the reaſon can be alleged no farther than as it explains the deſign of the Legiſlator ; and if it appear to be recited with an intentional application to one part of the law, it explains his deſign upon no other ; if it be mentioned merely to account for the choice of the day, it does not explain his deſign as to the extent of the obligation.

With reſpect to the ſecond objection, that inaſmuch as the other nine commandments are confeſſedly of moral and univerſal obligation, it may reaſonably be preſumed that this is of the ſame ;—we anſwer, that this argument will have leſs weight, when it is conſidered, that the diſtinction between poſitive and natural duties, like other diſtinctions of modern ethics, was unknown to the ſimplicity of ancient language ; and that there are various paſſages in ſcripture, in which duties of a political, or ceremonial, or poſitive nature, and confeſſedly of partial obligation, are enumerated, and without any mark of diſcrimination, along with others which are natural and univerſal. Of this the following is an inconteſtible example : " But if a man be juſt, and do that which is lawful and right ; and hath not eaten upon the mountains ; nor hath lifted up his eyes to the idols of the houſe of Iſrael : neither hath defiled his neighbour's wife ; *neither hath come near to a menſtruous woman ;* and hath not oppreſſed any, but hath reſtored to the debtor his pledge ; hath ſpoiled none by violence ; hath given his bread to the hungry, and hath covered the naked with a garment ; *he that hath not given upon uſury, neither hath taken any increaſe ;* that hath withdrawn his hand from iniquity ; hath executed true judgment between man and man ; hath walked in my ſtatutes ; and hath kept my judgments to deal truly ; he is juſt, he ſhall ſurely live, ſaith the Lord God." *Ezek.* xviii. 5—9. The ſame thing may be obſerved of the apoſtolic decree recorded in the fifteenth chapter of the Acts.—"It ſeemed good to the Holy Ghoſt and to us, to lay upon you no greater burden than theſe neceſſary things; that ye abſtain from meats offered to idols, and from blood, and from things ſtrangled, and *from fornication*: from which, if ye keep yourſelves, ye ſhall do well."

II. If the law by which the ſabbath was inſtituted, was a law only to the Jews, it becomes an important queſtion with the Chriſtian inquirer, whether the Founder of his religion delivered any new command upon the ſubject; or, if that ſhould not appear to be the caſe, whether any day was appropriated to the ſervice of religion, by the authority or example of his Apoſtles?

The practice of holding religious aſſemblies upon the firſt day of the week, was ſo early and univerſal in the Chriſtian church, that it carries with it conſiderable proof of having originated from ſome precept of Chriſt, or of his Apoſtles, though none ſuch be now extant. It was upon the *firſt* day of the week that the diſciples were aſſembled, when Chriſt appeared to them for the firſt time after his reſurrection; "then the ſame day at evening, *being the firſt day of the week*, when the doors were ſhut, where the diſciples were aſſembled, for fear of the Jews, came Jeſus and ſtood in the midſt of them." John, xx. 19. This, for any thing that appears in the account, might, as to the day, have been accidental: but in the 26th verſe of the ſame chapter we read, "that after eight days," that is, on the *firſt day* of the week *following*, "*again* the diſciples were within," which ſecond meeting upon the ſame day of the week looks like an appointment and deſign to meet on that particular day. In the twentieth chapter of the Acts of the Apoſtles, we find the ſame cuſtom in a Chriſtian church at a great diſtance from Jeruſalem: "And we came unto them to Troas in five days, where we abode ſeven days; and *upon the firſt* *day of the week, when the diſciples came together to break bread,* Paul preached unto them." Acts xx. 6, 7. The manner in which the hiſtorian mentions the diſciples coming together to break bread on the *firſt* day of the week, ſhews, I think, that the practice by this time was familiar and eſtabliſhed. St. Paul to the Corinthians writes thus: "Concerning the collection for the ſaints, as I have given order to the churches of Galatia, even ſo do ye; *upon the firſt day of the week,* let every one of you lay by him in ſtore as God hath proſpered him, that there be no gatherings when I come." 1 *Cor.* xvi. 1, 2. Which direction affords a probable proof, that the *firſt* day of the week was already amongſt the Chriſtians, both of Corinth and Galatia, diſtinguiſhed from the reſt, by ſome religious application or other. At the time that St. John wrote the book of his revelation, the firſt day of the week had obtained the name of the *Lord's day*: "I was in the ſpirit," ſays he, "*on the Lord's day.*" Rev. i. 10. Which name, and St. John's uſe of it, ſufficiently denote the appropriation of this day to the ſervice of religion, and that this appropriation was perfectly known to the churches of Aſia. I make no doubt but that by the *Lord's day* was meant the *firſt* day of the week; for we find no footſteps of any diſtinction of days, which could entitle any other to that appellation. The ſubſequent hiſtory of Chriſtianity correſponds with the accounts delivered on this ſubject in ſcripture.

It will be remembered, that we are contending, by theſe proofs, for no other duty upon the firſt day of the week, than that of holding and frequenting religious aſſemblies. A ceſſation upon that day from labour beyond the time of attendance upon public worſhip, is not intimated in any paſſage of the New Teſtament, nor did Chriſt or his Apoſtles deliver, that we know of, any command to their diſciples for a diſcontinuance, upon that day, of the common offices of their profeſſions. A reſerve which none will ſee reaſon to wonder at, or to blame as a defect in the inſtitution, who conſider that in the primitive condition of Chriſtianity, the obſervation of a new ſabbath would have been uſeleſs, or inconvenient, or impracticable. During Chriſt's perſonal miniſtry, his religion was preached to the Jews alone. *They* already had a ſabbath, which, as citizens and ſubjects of that economy, they were obliged to keep, and did keep. It was not therefore probable that Chriſt would enjoin another day of reſt in conjunction with this. When the new religion came forth into the Gentile world, converts to it were, for the moſt part, made from thoſe claſſes of ſociety, who have not their time and labour at their own diſpoſal; and it was ſcarcely to be expected, that unbelieving maſters and magiſtrates, and they who directed the employment of others, would permit their ſlaves and labourers to reſt from their work every ſeventh day; or that civil government, indeed, would have ſubmitted to the loſs of a ſeventh part of the public induſtry, and that too in addition to the numerous feſtivals which the national religions indulged to the people: at leaſt, this would have been an incumbrance which might have greatly retarded the reception of Chriſtianity in the world. In reality, the inſtitution of a weekly ſabbath is ſo connected with the functions of civil life, and requires ſo much of the concurrence of civil laws in its regulation and ſupport, that it cannot, perhaps, properly be made the ordinance of any religion, till that religion be received as the religion of the ſtate.

The opinion, that Chriſt and his Apoſtles meant to retain the duties of the Jewiſh ſabbath, ſhifting only the day from the ſeventh to the firſt, ſeems to prevail without ſufficient proof; nor does any evidence remain in ſcripture (of what, however, is not improbable) that the firſt day of the week was thus diſtinguiſhed in commemoration of our Lord's reſurrection.

The concluſion from the whole inquiry (for it is our buſineſs to follow the arguments to whatever probability they conduct us) is this: the *aſſembling* upon the firſt day of the week, for the purpoſe of public worſhip and religious inſtruction, is a law of Chriſtianity, of divine appointment; the *reſting* on that day from our employments longer than we are detained from them by attendance upon theſe aſſemblies, is to Chriſtians, an ordinance of human inſtitution: binding nevertheleſs upon the conſcience of every individual of a country in which a weekly ſabbath is eſtabliſhed, for the ſake of the beneficial purpoſes which the public and regular obſervance of it promotes; and recommended perhaps in ſome degree to the divine approbation, by the reſemblance it bears to what God was pleaſed to make a ſolemn part of the law which he delivered to the people of Iſrael, and by its ſubſerviency to many of the ſame uſes.

Chapter VIII.

BY WHAT ACTS AND OMISSIONS THE DUTY OF THE CHRISTIAN SABBATH IS VIOLATED.

SINCE the obligation upon Chriſtians, to comply with the religious obſervance of Sunday, ariſes from the public uſes of the inſtitution, and the authority of the apoſtolic practice, the *manner* of obſerving it ought to be that which beſt fulfils *theſe* uſes, and conforms the neareſt to *this* practice.

The uſes, propoſed by the inſtitution, are:

1. To facilitate attendance upon public worſhip.
2. To meliorate the condition of the laborious claſſes of mankind, by regular and ſeaſonable returns of reſt.
3. By a general ſuſpenſion of buſineſs and amuſement, to invite and enable perſons of every deſcription, to apply their time and thoughts to ſubjects appertaining to their ſalvation.

With the primitive Chriſtians the peculiar, and probably for ſome time the only diſtinction of the firſt day of the week, was the holding of religious aſſemblies upon that day. We learn, however, from the teſtimony of a very early writer amongſt them, that they alſo reſerved the day for religious meditations. *Unuſquiſque noſtrum*, ſaith Irenæus, *ſabbatizat ſpiritualiter, meditatione legis gaudens, opiſicium Dei admirans.*

Wherefore the duty of the day is violated:

1ſt. By all ſuch employments or engagements, as (though differing from our ordinary occupations) hinder our attendance upon public worſhip, or take up ſo much of our time, as not to leave a ſufficient part of the day at leiſure for religious reflection; as the going of journeys, the paying or receiving of viſits which engage the whole day, or employing the time at home in writing letters, ſettling accounts, or in applying ourſelves to ſtudies, or the reading of books, which bear no relation to the buſineſs of religion.

2dly. By unneceſſary encroachments upon the reſt and liberty which Sunday ought to bring to the inferior orders of the community; as by keeping ſervants on that day confined and buſied in preparations for the ſuperfluous elegancies of our table, or dreſs.

3dly. By ſuch recreations as are cuſtomarily forborne out of reſpect to the day; as hunting, ſhooting, fiſhing, public diverſions, frequenting taverns, playing at cards or dice.

If it be aſked, as it often has been, wherein conſiſts the difference between walking out with your ſtaff, or with your gun? between ſpending the evening at home or in a tavern? between paſſing the Sunday afternoon at a game at cards, or in converſation not more edifying, nor always ſo inoffenſive?—To theſe, and to the ſame queſtion under a variety of forms, and in a multitude of ſimilar examples, we return the following anſwer:—That the religious obſervance of Sunday, if it ought to be retained at all, muſt be upheld by ſome public and viſible diſtinctions—that draw the line of diſtinction where you will, many actions, which are ſituated on the confines of the line, will differ very little, and yet lie on the oppoſite ſides of it—that every treſpaſs upon that reſerve, which public decency has eſtabliſhed, breaks down the fence, by which the day is ſeparated to the ſervice of religion—that it is unſafe to trifle with ſcruples and habits that have a beneficial tendency, although founded merely in cuſtom—that theſe liberties, however intended, will certainly be conſidered by thoſe who obſerve them, not only as diſreſpectful to the day and inſtitution, but as proceeding from a ſecret contempt of the Chriſtian faith—that conſequently they diminiſh a reverence for religion in others, ſo far as the authority of our opinion, or the efficacy of our example reaches; or rather, ſo far as either will ſerve for an excuſe of negligence to thoſe who are glad of any—that as to cards and dice, which put in their claim to be conſidered among the *harmleſs* occupations of a vacant hour, it may be obſerved, that few find any difficulty in refraining from *play* on Sunday, except they who ſit down to it, with the views and eagerneſs of gameſters; that *gaming* is ſeldom innocent—that the anxiety and perturbations, however, which it excites, are inconſiſtent with the tranquillity, and frame of temper, in which the duties and thoughts of religion ſhould always both find, and leave us—and laſtly, we ſhall remark, that the example of other countries, where the ſame or greater licenſe is *allowed*, affords no apology for irregularities in our own; becauſe a practice which is tolerated by public uſage, neither receives the ſame conſtruction, nor gives the ſame offence, as where it is cenſured and prohibited.

Chapter IX.

OF REVERENCING THE DEITY.

IN many perſons, a ſerioufneſs, and ſenſe of awe, overſpread the imagination, whenever the idea of the Supreme Being is preſented to their thoughts. This effect, which forms a conſiderable ſecurity againſt vice, is the conſequence not ſo much of reflection, as of habit; which habit being generated by the external expreſſions of reverence, which we uſe ourſelves, or obſerve in others, may be deſtroyed by cauſes oppoſite to theſe, and eſpecially by that familiar levity with which ſome learn to ſpeak of the Deity, of his attributes, providence, revelations, or worſhip.

God hath been pleaſed, no matter for what reaſon, although probably for this, to forbid the vain mention of his name—"Thou ſhalt not take the name of the Lord thy God in vain." Now the mention is *vain*, when it is uſeleſs; and it is uſeleſs, when it is neither likely nor intended to ſerve any good purpoſe; as when it flows from the lips idle and unmeaning, or is applied upon occaſions inconſiſtent with any conſideration of religion or devotion, to expreſs our anger, our earneſtneſs, our courage, or our mirth; or indeed, when it is uſed at all, except in acts of religion, or in ſerious and ſeaſonable diſcourſe upon religious ſubjects.

The prohibition of the third commandment is recognized by Chriſt, in his ſermon upon the mount, which ſermon adverts to none but the moral parts of the Jewiſh law. "I ſay unto you, ſwear not at all; but let your communication be yea yea, nay nay; for whatſoever is more than theſe, cometh of evil." The Jews probably interpreted the prohibition as reſtrained to the name Jehovah, the name which the Deity had appointed and appropriated to himſelf. Exod. vi. 3. The words of Chriſt extend the prohibition beyond the *name* of God, to every thing aſſociated with the idea. "Swear not, neither by heaven, for it is God's throne; nor by the earth, for it is his footſtool; neither by Jeruſalem, for it is the city of the Great King." Matt. v. 35.

The offence of profane ſwearing is aggravated by the conſideration, that in *it* duty and decency are ſacrificed to the ſlendereſt of temptations. Suppoſe the habit, either from affectation, or by negligence and inadvertency, to be already formed, it muſt always remain within the power of the moſt ordinary reſolution to correct it, and it cannot, one would think, coſt a great deal to relinquiſh the pleaſure and honour which it confers. A concern for duty is in fact never ſtrong, when the exertion, requiſite to vanquiſh a habit founded in no antecedent propenſity, is thought too much or too painful.

A contempt of poſitive duties, or rather of thoſe duties from which the reaſon is not ſo plain as the command, indicates a diſpoſition upon which the authority of revelation has obtained little influence. This remark is applicable to the offence of profane ſwearing, and deſcribes, perhaps, pretty exactly, the general character of thoſe who are moſt addicted to it.

Mockery and ridicule, when exerciſed upon the ſcriptures, or even upon the places, perſons, and forms ſet apart for the miniſtration of religion, fall within the miſchief of the law which forbids the profanation of God's name; eſpecially as that law is extended by Chriſt's interpretation. They are, moreover, inconſiſtent with a religious frame of mind: for, as no one ever either feels himſelf diſpoſed to pleaſantry, or capable of being diverted with the pleaſantry of others, upon matters in which he is deeply intereſted; ſo a mind, intent upon the acquiſition of heaven, rejects with indignation, every attempt to entertain it with jeſts, calculated to degrade or deride ſubjects, which it never recollects but with ſerioufneſs and anxiety. Nothing but ſtupidity, or the moſt frivolous diſſipation of thought, can make even the inconſiderate forget the ſupreme importance of every thing which relates to the expectation of a future exiſtence. Whilſt the infidel mocks at the ſuperſtitions of the vulgar, inſults over their credulous fears, their childiſh errors, or fantaſtic rites, it does not occur to him to obſerve, that the moſt prepoſterous device by which the weakeſt devotee ever believed he was ſecuring the happineſs of a future life, is more rational than unconcern about it. Upon this ſubject nothing is ſo abſurd, as indifference—no folly ſo contemptible, as thoughtleſſneſs and levity.

Finally, the knowledge of what is due to the ſolemnity of thoſe intereſts, concerning which revelation profeſſes to inform and direct us, may teach even thoſe who are leaſt inclined to reſpect the prejudices of mankind, to obſerve a decorum in the ſtyle and conduct of religious diſquiſitions, with the neglect of which, many adverſaries of Chriſtianity are juſtly chargeable. Serious arguments are fair on all ſides. Chriſtianity is but ill defended by refuſing audience or toleration to the objections of unbelievers. But whilſt we would have freedom of inquiry reſtrained by no laws, but thoſe of decency, we are entitled to demand on behalf of a religion, which holds forth to mankind aſſurances of immortality, that its credit be aſſailed by no other weapons than thoſe of ſober diſcuſſion and legitimate reaſoning—that the truth or falſehood of Chriſtianity be never made a topic of raillery, a theme for the exerciſe of wit or eloquence, or a ſubject of contention for literary fame and victory; that the cauſe be tried upon its merits—that all applications to the fancy, paſſions or prejudices of the reader, all attempts to pre-occupy, enſnare, or perplex his judgment, by any art, influence, or impreſſion whatſoever, extrinſic to the proper grounds and evidence upon which his aſſent ought to proceed, be rejected from a queſtion which involves in its determination, the hopes, the virtue, and the repoſe of millions—that the controverſy be managed on both ſides with ſincerity, that is, that nothing be produced in the writings of either, contrary to, or beyond, the writer's own knowledge and perſuaſion—that objections and difficulties be propoſed from no other motives, than an honeſt and ſerious deſire to obtain ſatisfaction, or to communicate information which may promote the diſcovery and progreſs of truth; that in conformity with this deſign, every thing be ſtated with integrity, with method, preciſion, and ſimplicity; and, above all, that whatever is publiſhed in oppoſition to received and confeſſedly beneficial perſuaſions, be ſet forth under a form, which is likely to invite inquiry and to meet examination. If, with theſe moderate and equitable conditions, be compared the manner in which hoſtilities have been waged againſt the Chriſtian religion, not only the votaries of the prevailing faith, but every man who looks forward with anxiety to the deſtination of his being, will ſee much to blame, and to complain of. By *one unbeliever*, all the follies which have adhered, in a long courſe of dark and ſuperſtitious ages, to the popular creed, are aſſumed as ſo many doctrines of

Chriſt and his Apoſtles, for the purpoſe of ſubverting the whole ſyſtem, by the abſurdities, which it is *thus* repreſented to contain. By *another*, the ignorance and vices of the ſacerdotal order, their mutual diſſenſions and perſecutions, their uſurpations and encroachments upon the intellectual liberty and civil rights of mankind, have been diſplayed with no ſmall triumph and invective, not ſo much to guard the Chriſtian laity againſt a repetition of the ſame injuries, which is the only proper uſe to be made of the moſt flagrant examples of the paſt, as to prepare the way for an inſinuation, that the religion itſelf is nothing but a profitable fable, impoſed upon the fears and credulity of the multitude, and upheld by the frauds and influence of an intereſted and crafty prieſthood. And yet how remotely is the character of the clergy connected with the truth of Chriſtianity? What, after all, do the moſt diſgraceful pages of eccleſiaſtical hiſtory prove, but that the paſſions of our common nature are not altered or excluded by diſtinctions of name, and that the characters of men are formed much more by the temptations than the duties of their profeſſion? A *third* finds delight in collecting and repeating accounts of wars and maſſacres, of tumults and inſurrections, excited in almoſt every age of the Chriſtian era by religious zeal; as though the vices of Chriſtians were parts of Chriſtianity; intolerance and extirpation precepts of the goſpel; or as if its ſpirit could be judged of, from the councils of princes, the intrigues of ſtateſmen, the pretences of malice and ambition, or the unauthorized cruelties of ſome gloomy and virulent ſuperſtition. By a *fourth*, the ſucceſſion and variety of popular religions; the viciſſitudes with which ſects and tenets have flouriſhed and decayed; the zeal with which they were once ſupported, the negligence with which they are now remembered; the little ſhare which reaſon and argument appear to have had in framing the creed, or regulating the religious conduct of the multitude; the indifference and ſubmiſſion with which the religion of the ſtate is generally received by the common people; the caprice and vehemence with which it is ſometimes oppoſed; the frenzy with which men have been brought to contend for opinions and ceremonies, of which they knew neither the proof, the meaning nor the original; laſtly, the equal and undoubting confidence with which we hear the doctrines of Chriſt or of Confucius, the law of Moſes or of Mahomet, the Bible, the Koran, or the Shaſter, maintained or anathematized, taught or abjured, revered or derided, according as we live on this, or on that ſide of a river; keep within, or ſtep over the boundaries of a ſtate; or even in the ſame country, and by the ſame people, ſo often as the event of a battle, or the iſſue of a negociation delivers them to the dominion of a new maſter: Points, I ſay, of this ſort are exhibited to the public attention, as ſo many arguments againſt the *truth* of the *Chriſtian* religion —and with ſucceſs. For theſe topics, being brought together, and ſet off with ſome aggravation of circumſtances, and with a vivacity of ſtyle and deſcription, familiar enough to the writings and converſation of free-thinkers, inſenſibly lead the imagination into a habit of claſſing Chriſtianity with the deluſions, that have taken poſſeſſion, by turns, of the public belief; and of regarding it, as what the ſcoffers of our faith repreſent it to be, *the ſuperſtition of the day*. But is this to deal honeſtly by the ſubject, or with the world? May not the ſame things be ſaid, may not the ſame prejudices be excited by theſe repreſentations, whether Chriſtianity be true or falſe, or by whatever proofs its truth be atteſted? May not truth as well as falſehood be taken upon credit? May not a religion be founded upon evidence, acceſſible and ſatisfactory to every mind competent to the inquiry, which yet, by the greateſt part of its profeſſors, is received upon authority?

But if the *matter* of theſe objections be reprehenſible, as calculated to produce an effect upon the reader, beyond what their real weight and place in the argument deſerve, ſtill more ſhall we diſcover of management and diſingenuouſneſs in the *form* under which they are diſperſed among the public. Infidelity is ſerved up in every ſhape, that is likely to allure, ſurpriſe, or beguile the imagination; in a fable, a tale, a novel, a poem; in interſperſed and broken hints, remote and oblique ſurmiſes; in books of travels, of philoſophy, of natural hiſtory; in a word, in any form, rather than the right one, that of a profeſſed and regular diſquiſition. And becauſe the coarſe buffoonery, and broad laugh of the old and rude adverſaries of the Chriſtian faith, would offend the taſte, perhaps, rather than the virtue of this cultivated age, a graver irony, a more ſkilful and delicate banter is ſubſtituted in their place. An eloquent hiſtorian, beſide his more direct, and therefore fairer attacks upon the credibility of the evangelic ſtory, has contrived to weave into his narration one continued ſneer upon the cauſe of Chriſtianity, and upon the writings and characters of its ancient patrons. The knowledge which this author poſſeſſes of the frame and conduct of the human mind, muſt have led him to obſerve, that ſuch attacks do their execution without inquiry. Who can refute a *ſneer?* Who can compute the number, much leſs, one by one, ſcrutinize the juſtice of thoſe diſparaging inſinuations, which croud the pages of this elaborate hiſtory? What reader ſuſpends his curioſity, or calls off his attention from the principal narrative, to examine references, to ſearch into the foundation, or to weigh the reaſon, propriety and force of every tranſient ſarcaſm, and ſly alluſion, by which the Chriſtian teſtimony is depreciated and traduced? and by which, nevertheleſs, he may find his perſuaſion afterwards unſettled and perplexed?

But the enemies of Chriſtianity have purſued her with poiſoned arrows. Obſcenity itſelf is made the vehicle of infidelity. The awful doctrines, if we be not permitted to call them the ſacred truths, of our religion, together with all the adjuncts and appendages of its worſhip and external profeſſion, have been ſometimes impudently profaned by an unnatural conjunction with impure and laſcivious images. The fondneſs for ridicule is almoſt univerſal; and ridicule, to many minds, is never ſo irreſiſtible, as when ſeaſoned with obſcenity, and employed upon religion. But in proportion as theſe noxious principles take hold of the imagination, they infatuate the judgment; for trains of ludicrous and unchaſte aſſociations, adhering to every ſentiment and mention of religion, render the mind indiſpoſed to receive either conviction from its evidence, or impreſſions from its authority. And this effect, being exerted upon the ſenſitive part of our frame, is altogether independent of argument, proof, or reaſon; is as formidable to a true religion, as to a falſe one; to a well grounded faith, as to a chimerical mythology, or fabulous tradition. Neither, let it be obſerved, is the crime or danger leſs, becauſe impure ideas are exhibited under a veil, in covert and chaſtized language.

Serioufneſs is not conſtraint of thought; nor levity, freedom. Every mind which wiſhes the advancement of truth and knowledge, in the moſt important of all human reſearches, muſt abhor this licentiouſneſs, as violating no leſs the laws of reaſoning, than the rights of decency. There is but one deſcription of men, to whoſe principles it ought to be tolerable, I mean that claſs of reaſoners, who can ſee *little* in Chriſtianity, even ſuppoſing it to be true. To ſuch adverſaries we addreſs this reflection—Had Jeſus Chriſt delivered no other declaration than the following: "The hour is coming, in the which all that are in the grave ſhall hear his voice, and ſhall come forth; they that have done good, unto the reſurrection of life, and they that have done evil, unto the reſurrection of damnation;" he had pronounced a meſſage of ineſtimable importance, and well worthy of that ſplendid apparatus of prophecy and miracles, with which his miſſion was introduced and atteſted; a meſſage, in which the wiſeſt of mankind would rejoice to find an anſwer to their doubts, and reſt to their inquiries. It is idle to ſay, that a future ſtate had been diſcovered already—It had been diſcovered, as the *Copernican* ſyſtem was—it was one gueſs among many. He alone diſcovers, who *proves:* and no man can prove this point, but the teacher who teſtifies by miracles that his doctrine comes from God.

BOOK VI.

Elements of Political Knowledge.

Chapter I.

OF THE ORIGIN OF CIVIL GOVERNMENT.

GOVERNMENT, at firſt, was either patriarchal or military: *that* of a parent over his family, or of a commander over his fellow warriors.

I. Paternal authority, and the order of domeſtic life, ſupplied the foundation of *civil government*. Did mankind ſpring out of the earth mature and independent, it would be found perhaps impoſſible to introduce ſubjection and ſubordination among them; but the condition of human infancy prepares men for ſociety, by combining individuals into ſmall communities, and by placing them, from the beginning, under direction and control. A family contains the rudiments of an empire. The authority of one over many, and the diſpoſition to govern and to be governed, are in this way incidental to the very nature, and coeval, no doubt, with the exiſtence of the human ſpecies. Moreover, the conſtitution of families not only aſſiſts the formation of civil government, by the diſpoſitions which it generates, but alſo furniſhes the firſt ſteps of the proceſs by which empires have been actually reared. A parent would retain a conſiderable part of his authority after his children had grown up, and had formed families of their own. The obedience, of which they remembered not the beginning, would be conſidered as natural; and would ſcarcely, during the parent's life, be entirely or abruptly withdrawn. Here then we ſee the ſecond ſtage in the progreſs of dominion. The firſt was, that of a parent over his young children: this that of an anceſtor preſiding over his adult deſcendants.

Although the original progenitor was the centre of the union to his poſterity, yet it is not probable that the aſſociation would be immediately or altogether diſſolved by his death. Connected by habits of intercourſe and affection, and by ſome common rights, neceſſities and intereſts, they would conſider themſelves as allied to each other in a nearer degree than to the reſt of the ſpecies. Almoſt all would be ſenſible of an inclination to continue in the ſociety in which they had been brought up; and experiencing, as they ſoon would do, many inconveniences from the abſence of that authority which their common anceſtor exerciſed, eſpecially in deciding their diſputes, and directing their operations in matters in which it was neceſſary to act in conjunction, they might be induced to ſupply his place by a formal choice of a ſucceſſor, or rather might willingly, and almoſt imperceptibly transfer their obedience to ſome one of the family, who, by his age or ſervices, or by the part he poſſeſſed in the direction of their affairs during the life-time of the parent, had already taught them to reſpect his advice, or to attend to his commands; or laſtly, the proſpect of theſe inconveniences might prompt the firſt anceſtor to appoint a ſucceſſor, and his poſterity, from the ſame motive, united with an habitual deference to the anceſtor's authority, might receive the appointment with ſubmiſſion. Here then we have a tribe or clan incorporated under one chief. Such communities might be increaſed by conſiderable numbers, and fulfil the purpoſes of civil union without any other or more regular convention, conſtitution, or form of government, than what we have deſcribed. Every branch which was ſlipped off from the primitive ſtock, and removed to a diſtance from it, would in like manner take root, and grow into a ſeparate clan. Two or three of theſe clans were frequently, we may ſuppoſe, united into one. Marriage, conqueſt, mutual defence, common diſtreſs, or more accidental coalitions, might produce this effect.

II. A ſecond ſource of perſonal authority, and which might eaſily extend, or ſometimes perhaps ſuperſede, the patriarchal, is that, which reſults from military arrangement. In wars, either of aggreſſion or defence, manifeſt neceſſity would prompt thoſe who fought on the ſame ſide to array themſelves under one leader. And although their *leader* was advanced to this eminence for the purpoſe only, and during the operations of a ſingle expedition, yet his authority would not always terminate with the reaſons for which it was conferred. A warrior who had led forth his tribe againſt their enemies with repeated ſucceſs, would procure to himſelf, even in the deliberations of peace, a powerful and permanent influence. If this advantage were added to the authority of the patriarchal chief, or favoured by any previous diſtinction of anceſtry, it would be no difficult undertaking for the perſon who poſſeſſed it to obtain the almoſt abſolute direction of the affairs of the community, eſpecially if he was careful to aſſociate to himſelf proper auxiliaries, and content to practiſe the obvious art of gratifying or removing thoſe who oppoſed his pretenſions.

But, although we may be able to comprehend how by his perſonal abilities or fortune one man may obtain the rule over many, yet it ſeems more difficult to explain how empire became *hereditary*, or in what manner ſovereign power, which is never acquired without great merit or management, learns to deſcend in a ſucceſſion, which has no dependence upon any qualities, either of underſtanding, or activity. The cauſes which have introduced hereditary dominion into ſo general a reception in the world, are principally the following--the influence of aſſociation, which communicates to the ſon a portion of the ſame reſpect which was wont to be paid to the virtues or ſtation of the father--the mutual jealouſy of other competitors--the greater envy, with which all behold the exaltation of an equal, than the continuance of an acknowledged ſuperiority—a reigning prince, leaving behind him many adherents, who can preſerve their own importance, only by ſupporting the ſucceſſion of his children—Add to theſe reaſons, that elections to the ſupreme power having, upon trial, produced deſtructive contentions, many ſtates would take refuge from a return of the ſame calamities, in a rule of ſucceſſion; and no rule preſents itſelf ſo obvious, certain, and intelligible, as conſanguinity of birth.

The ancient ſtate of ſociety in moſt countries, and the modern condition of ſome uncivilized parts of the world, exhibit that appearance, which this account of the origin of civil government would lead us to expect. The earlieſt hiſtories of Paleſtine, Greece, Italy, Gaul, Britain, inform us, that theſe countries were occupied by many ſmall independent nations, not much perhaps unlike thoſe which are found at preſent amongſt the ſavage inhabitants of North America, and upon the coaſt of Africa. Theſe nations I conſider as the amplifications of ſo many ſingle families, or as derived from the junction of two or three families, whom ſociety in war, or the approach of ſome common danger, had united. Suppoſe a country to have been firſt peopled by ſhipwreck on its coaſts, or by emigrants or exiles from a neighbouring country, the new ſettlers having no enemy to provide againſt, and occupied with the care of their perſonal ſubſiſtence, would think little of digeſting a ſyſtem of laws, of contriving a form of government, or indeed of any political union whatever; but each ſettler would remain at the head of his own family, and each family would include all of every age and generation who were deſcended from him. So many of theſe families as were holden together after the death of the original anceſtor, by the reaſons, and in the method above recited, would wax, as the individuals were multiplied, into tribes, clans, hordes, or nations, ſimilar to thoſe into which the ancient inhabitants of many countries are known to have been divided, and which are ſtill found, wherever the ſtate of ſociety and manners is immature and uncultivated.

Nor need we be ſurpriſed at the early exiſtence in the world of ſome vaſt empires, or at the rapidity with which they advanced to their greatneſs, from comparatively ſmall and obſcure originals. Whilſt the inhabitants of ſo many countries were broken into numerous communities, unconnected, and oftentimes contending with each other; before experience had taught theſe little ſtates to ſee their own danger in their neighbour's ruin; or had inſtructed them in the neceſſity of reſiſting the aggrandizement of an aſpiring power, by alliances and timely preparations; in this condition of civil policy, a particular tribe, which by any means had got the ſtart of the reſt in ſtrength, or diſcipline, and happened to fall under the conduct of an ambitious chief, by directing their firſt attempts to the part where ſucceſs was moſt ſecure, and by aſſuming, as they went along, thoſe whom they conquered, into a ſhare of their future enterprizes, might ſoon gather a force which would infallibly overbear any oppoſition, that the ſcattered power and unprovided ſtate of ſuch enemies could make to the progreſs of their victories.

Laſtly, our theory affords a preſumption, that the earlieſt governments were monarchies, becauſe the government of families, and of armies, from which, according to our account, civil government derived its inſtitution, and probably its form, is univerſally monarchical.

Chapter II.

HOW SUBJECTION TO CIVIL GOVERNMENT IS MAINTAINED.

COULD we view our own ſpecies from a diſtance, or regard mankind with the ſame ſort of obſervation, with which we read the natural hiſtory, or remark the *manners*, of any other animal, there is nothing in the human character which would more ſurpriſe us, than the almoſt univerſal ſubjugation of ſtrength to weakneſs—than to ſee many millions of robuſt men, in the complete uſe and exerciſe of their perſonal faculties, and without any defect of courage, waiting upon the will of a child, a woman, a driveller, or a lunatic. And although, when we ſuppoſe a vaſt empire in abſolute ſubjection to one perſon, and that one depreſſed beneath the level of his ſpecies by infirmities, or vice, we ſuppoſe perhaps an extreme caſe, yet in all caſes, even in the moſt popular forms of civil government, *the phyſical ſtrength reſides in the governed.* In what manner opinion thus prevails over ſtrength, or how power, which naturally belongs to ſuperior force, is maintained in oppoſition to it ; in other words, by what motives the many are induced to ſubmit to the few, becomes an inquiry which lies at the root of almoſt every political ſpeculation. It removes, indeed, but does not reſolve the difficulty, to ſay, that civil governments are now-a-days almoſt univerſally upheld by ſtanding armies ; for the queſtion ſtill returns, how are theſe armies themſelves kept in ſubjection, or made to obey the commands, and carry on the deſigns, of the prince or ſtate which employs them.

Now although we ſhould look in vain for any *ſingle* reaſon which will account for the general ſubmiſſion of mankind to civil government, yet it may not be difficult to aſſign for every claſs and character in the community, conſiderations powerful enough to diſſuade each from any attempts to reſiſt eſtabliſhed authority. Every man has his motive, though not the ſame. In this, as in other inſtances, the conduct is ſimilar, but the principles which produce it extremely various.

There are three diſtinctions of character into which the ſubjects of a ſtate may be divided ; into thoſe who obey from prejudice ; thoſe who obey from reaſon ; and thoſe who obey from ſelf-intereſt.

I. They who obey from prejudice, are determined by an opinion of *right* in their governors; which opinion is founded upon *preſcription.* In monarchies and ariſtocracies which are hereditary, the preſcription operates in favour of particular families; in republics and elective offices, in favour of particular forms of government, or conſtitutions Nor is it to be wondered at, that mankind ſhould reverence authority founded in preſcription, when they obſerve that it is preſcription which confers the title to almoſt every thing elſe. The whole courſe and all the habits of civil life, favour this prejudice. Upon what other foundation ſtands any man's right to his eſtate? The right of primogeniture, the ſucceſſion of kindred, the deſcent of property, the inheritance of honours, the demand of tithes, tolls, rents, or ſervices from the eſtates of others, the right of way, the powers of office and magiſtracy, the privileges of nobility, the immunities of the clergy, upon what are they all founded, in the apprehenſion at leaſt of the multitude, but upon preſcription? To what elſe, when the claims are conteſted, is the appeal made? It is natural to transfer the ſame principle to the affairs of government, and to regard thoſe exertions of power, which have been long exerciſed and acquieſced in, as ſo many *rights* in the ſovereign; and to conſider obedience to his commands, within certain accuſtomed limits, as enjoined by that rule of conſcience, which requires us to render to every man his due.

In hereditary monarchies, the *preſcriptive title* is corroborated, and its influence conſiderably augmented, by an acceſſion of religious ſentiments, and by that ſacredneſs which men are wont to aſcribe to the perſons of princes. Princes themſelves have not failed to take advantage of this diſpoſition, by claiming a ſuperior dignity, as it were, of nature, or a peculiar delegation from the Supreme Being. For this purpoſe were introduced the titles of ſacred majeſty, of God's anointed, repreſentative, vicegerent, together with the ceremonies of inveſtitures and coronations, which are calculated not ſo much to recognize the authority of ſovereigns, as to conſecrate their perſons. Where a fabulous religion permitted it, the public veneration has been challenged by bolder pretenſions. The Roman emperors uſurped the titles, and arrogated the worſhip of gods. The mythology of the heroic ages, and of many barbarous nations, was eaſily converted to this purpoſe. Some princes, like the heroes of Homer, and the founder of the Roman name, derived their birth from the gods; others, with Numa, pretended a ſecret communication with ſome divine being; and others again, like the Incas of Peru, and the ancient Saxon kings, extracted their deſcent from the deities of their country. The Lama of Thibet, at this day, is held forth to his ſubjects, not as the offspring or ſucceſſor of a divine race of princes, but as the immortal God himſelf, the object at once of civil obedience and religious adoration. This inſtance is ſingular, and may be accounted the fartheſt point to which the abuſe of human credulity has ever been carried. But in all theſe inſtances the purpoſe was the ſame—to engage the reverence of mankind, by an application to their religious principles.

The reader will be careful to obſerve, that in this article we denominate every opinion, whether true or falſe, a *prejudice*, which is not founded upon argument, in the mind of the perſon who entertains it.

II. They who obey from *reaſon*, that is to ſay, from conſcience as inſtructed by reaſonings and concluſions of their own, are determined by the conſideration of the neceſſity of ſome government or other; the certain miſchief of civil commotions, and the danger of reſettling the government of their country better, or at all, if once ſubverted or diſturbed.

III. They who obey from *ſelf-intereſt*, are kept in order by want of leiſure; by a ſucceſſion of private cares, pleaſures and engagements; by contentment, or a ſenſe of the eaſe, plenty, and ſafety which they enjoy; or laſtly and principally, by fear, foreſeeing that they would bring themſelves by reſiſtance into a worſe ſituation than their preſent, inaſmuch as the ſtrength of goverement, each diſcontented ſubject reflects, is greater than his own, and he knows not that others would join him. This laſt conſideration has often been called *opinion of power.*

This account of the principles by which mankind are retained in their obedience to civil government, may ſuggeſt the following cautions :

1. Let civil governors learn from hence to reſpect their ſubjects ; let them be admoniſhed, that *the phyſical ſtrength reſides in the governed ;* that this ſtrength wants only to be felt and rouſed, to lay proſtrate the moſt ancient and confirmed dominion ; that civil authority is founded in opinion ; that general opinion therefore ought always to be treated with deference, and managed with delicacy and circumſpection.

2. *Opinion of right* always following *the cuſtom*, being for the moſt part founded in nothing elſe, and lending one principal ſupport to government, every innovation in the conſtitution, or, in other words, in the cuſtom of governing, diminiſhes the ſtability of government. Hence ſome abſurdities are to be retained, and many ſmall inconveniences endured in every country, rather than the uſage ſhould be violated, or the courſe of public affairs diverted from their old and ſmooth channel. Even *names* are not indifferent. When the multitude are to be dealt with, there is a *charm* in ſounds. It was upon this principle, that ſeveral ſtateſmen of thoſe times adviſed Cromwell to aſſume the title of king, together with the ancient ſtyle and inſignia of royalty. The minds of many, they contended, would be brought to acquieſce in the authority of a king, who ſuſpected the office, and were offended with the adminiſtration of a protector. Novelty reminded them of uſurpation. The adverſaries of this deſign oppoſed the meaſure, from the ſame perſuaſion of the efficacy of names and forms, jealous leſt the veneration paid to theſe, ſhould add an influence to the new ſettlement, which might enſnare the liberty of the commonwealth.

3. *Government may be too ſecure.* The greateſt tyrants have been thoſe, whoſe titles were the moſt unqueſtionable. Whenever therefore the opinion of right becomes too predominant and ſuperſtitious, it is abated by *breaking the cuſtom.* Thus the Revolution broke the *cuſtom of ſucceſſion*, and thereby moderated, both in the prince and in the people, thoſe lofty notions of hereditary right, which in the one were become a continual incentive to tyranny, and diſpoſed the other to invite ſervitude, by undue compliances and dangerous conceſſions.

4. As ignorance of union and want of communication appear amongſt the principal preſervatives of civil authority, it behooves every ſtate to keep its ſubjects in this want and ignorance, not only by vigilance in guarding againſt actual confederacies and combinations, but by a timely care to prevent great collections of men of any ſeparate party of religion, or of like occupation or profeſſion, or in any way connected by a participation of intereſt or paſſion, from being aſſembled in the ſame vicinity. A Proteſtant eſtabliſhment in this country, may have little to fear from its Popiſh ſubjects, ſcattered as they are throughout the kingdom, and intermixed with the Proteſtant inhabitants, which yet might think them a formidable body, if they were gathered together into one county. The moſt frequent and deſperate riots are thoſe which break out amongſt men of the ſame profeſſion, as weavers, miners, ſailors. This circumſtance makes a mutiny of ſoldiers more to be dreaded than any other inſurrection. Hence alſo one danger of an overgrown metropolis, and of thoſe great cities and crowded diſtricts, into which the inhabitants of trading countries are commonly collected. The worſt effect of popular tumults conſiſts in this, that they diſcover to the inſurgents the ſecret of their own ſtrength, teach them to depend upon it againſt a future occaſion, and both produce and diffuſe ſentiments of confidence in one another, and aſſurances of mutual ſupport. Leagues thus formed and ſtrengthened, may overawe, or overſet the power of

any ſtate ; and the danger is greater, in proportion, as, from the propinquity of habitation and intercourſe of employment, the paſſions and counſels of a party can be circulated with eaſe aud rapidity. It is by theſe means, and in ſuch ſituations, that the minds of men are ſo affected and prepared, that the moſt dreadful uproars often ariſe from the ſlighteſt provocations. When the train is laid, a ſpark will produce the exploſion.

Chapter III.

THE DUTY OF SUBMISSION TO CIVIL GOVERNMENT EXPLAINED.

THE ſubject of this Chapter is ſufficiently diſtinguiſhed from the ſubject of the laſt, as the motives which actually produce civil obedience, may be, and often are, very different from the reaſons which make that obedience a duty.

In order to prove civil obedience to be a moral duty, and an obligation upon the conſcience, it hath been uſual with many political writers, at the head of whom we find the venerable name of LOCKE, to ſtate a compact between the citizen and the ſtate, as the ground and cauſe of the relation between them ; which compact binding the parties, for the ſame general reaſon that private contracts do, reſolves the duty of ſubmiſſion to civil government into the univerſal obligation of fidelity in the performance of promiſes. This compact is two-fold :

Firſt, An *expreſs* compact by the primitive founders of the ſtate, who are ſuppoſed to have convened for the declared purpoſe of ſettling the terms of their political union, and a future conſtitution of government. The whole body is ſuppoſed, in the firſt place, to have unanimouſly conſented to be bound by the reſolutions of the majority ; that majority, in the next place, to have fixed certain fundamental regulations; and then to have conſtituted, either in one perſon, or in an aſſembly (the rule of ſucceſſion or appointment being at the ſame time determined) a *ſtanding legiſlature*, to whom, under theſe pre-eſtabliſhed reſtrictions, the government of the ſtate was thenceforward committed, and whoſe laws the ſeveral members of the convention were, by their firſt undertaking, thus perſonally engaged to obey. This tranſaction is ſometimes called the *ſocial compact*, and theſe ſuppoſed original regulations compoſe what are meant by the *conſtitution*, the *fundamental laws of the conſtitution;* and form, on one ſide, the *inherent indefeaſible prerogative of the crown:* and, on the other, the unalienable inpreſcriptible *birth-right* of the ſubject.

Secondly, A *tacit* or *implied* compact, by all ſucceeding members of the ſtate, who, by accepting its protection, conſent to be bound by its laws; in like manner, as whoever *voluntarily enters* into a private ſociety, is underſtood, without any other or more explicit ſtipulation, to promiſe a conformity with the rules, and obedience to the government of that ſociety, as the known conditions upon which he is admitted to a participation of its privileges.

This account of the ſubject, although ſpecious, and patronized by names the moſt reſpectable, appears to labour under the following objections; that it is founded upon a ſuppoſition falſe in fact; and leading to dangerous concluſions. No ſocial compact, ſimilar to what is here deſcribed, was ever made or entered into in reality; no ſuch original convention of the people was ever actually held, or in any country could be held, antecedent to the exiſtence of civil government in that country. It is to ſuppoſe it poſſible to call ſavages out of caves and deſerts, to deliberate and vote upon topics, which the experience, and ſtudies, and refinements of civil life alone ſuggeſt. Therefore no government in the univerſe *begun* from this original. Some imitation of a ſocial compact may have taken place at a revolution. The preſent age has been witneſs to a tranſaction, which bears the neareſt reſemblance to this political idea, of any of which hiſtory has preſerved the account or memory. I refer to the eſtabliſhment of the United States of North-America. We ſaw the *people* aſſembled to elect deputies, for the avowed purpoſe of framing the conſtitution of a new empire. We ſaw this deputation of the people deliberating and reſolving upon a form of government, erecting a permanent legiſlature, diſtributing the functions of ſovereignty, eſtabliſhing and promulgating a code of fundamental ordinances, which were to be conſidered by ſucceeding generations, not merely as laws and acts of the ſtate, but as the very terms and conditions of the confederation; as binding not only upon the ſubjects and magiſtrates of the ſtate, but as limitations of power, which were to control and regulate the future legiſlature. Yet even here much was preſuppoſed. In ſettling the conſtitution many important parts were preſumed to be already ſettled. The qualifications of the conſtituents who were admitted to vote in the election of members of congreſs, as well as the mode of electing the repreſentatives, were taken from the old forms of government. That was wanting from which every ſocial union ſhould ſet off, and which alone makes the reſolutions of the ſociety the act of the individual, the unconſtrained conſent of all to be bound by the deciſion of the majority; and yet, without this previous conſent, the revolt, and the regulations which followed it, were compulſory upon diſſentients.

But the original compact, we are told, is not propoſed as a *fact*, but as a fiction, which furniſhes a commodious explication of the mutual rights and duties of ſovereigns and ſubjects. In anſwer to this repreſentation of the matter, we obſerve, that the original compact, if it be not a fact, is nothing; can confer no actual authority upon laws or magiſtrates, nor afford any foundation to rights, which are ſuppoſed to be real and exiſting. But the truth is, that in the books, and in the apprehenſion of thoſe who deduce our civil rights and obligations *a pactis*, the original convention is appealed to and treated of as a reality. Whenever the diſciples of this ſyſtem ſpeak of the conſtitution; of the fundamental articles of the conſtitution; of laws being conſtitutional or unconſtitutional; of inherent, unalienable, inextinguiſhable rights, either in the prince, or in the people; or indeed of any laws, uſages, or civil rights, as tranſcending the authority of the ſubſiſting legiſlature, or poſſeſſing a force and ſanction ſuperior to what belong to the modern acts and edicts of the legiſlature, they ſecretly refer us to what paſſed at the original convention. They would teach us to believe that certain rules and ordinances were eſtabliſhed by the people, at the ſame time that they ſettled the charter of government, and the powers as well as the form of the future legiſlature; that this legiſlature conſequently, deriving its commiſſion and exiſtence from the conſent and act of the primitive aſſembly (of which indeed it is only the ſtanding deputation) continues ſubject in the exerciſe of its offices, and as to the extent of its power, to the rules, reſervations, and limitations which the ſame aſſembly then made and preſcribed to it.

"As the firſt members of the ſtate were bound by expreſs ſtipulation to obey the government which they had erected, ſo the ſucceeding inhabitants of the ſame country are underſtood to promiſe allegiance to the conſtitution and government they find eſtabliſhed, by accepting its protection, claiming its privileges, and acquieſcing in its laws; more eſpecially, by the purchaſe or inheritance of lands, to the poſſeſſion of which, allegiance to the ſtate is annexed, as the very ſervice and condition of the tenure." Smoothly as this train of argument proceeds, little of it will endure examination. The native ſubjects of modern ſtates are not conſcious of any ſtipulation with their ſovereigns, of ever exerciſing an election whether they will be bound or not by the acts of the legiſlature, of any alternative being propoſed to their choice, of a promiſe either required or given; nor do they apprehend that the validity or authority of the laws depends at all upon their recognition or conſent. In all ſtipulations, whether they be expreſſed or implied, private or public, formal or conſtructive, the parties ſtipulating muſt both poſſeſs the liberty of aſſent and refuſal, and alſo be conſcious of this liberty; which cannot with truth be affirmed of the ſubjects of civil government, as government is now, or ever was actually adminiſtered. This is a defect, which no arguments can excuſe or ſupply: all preſumptions of conſent, without this conſciouſneſs, or in oppoſition to it, are vain and erroneous. Still leſs is it poſſible to reconcile with any idea of ſtipulation the practice in which all European nations agree, of founding allegiance upon the circumſtance of nativity, that is, of claiming and treating as ſubjects all thoſe who are born within the confines of their dominions, although removed to another country in their youth or infancy. In this inſtance certainly, the ſtate does not preſume a compact. Alſo if the ſubject be bound only by his own conſent, and if the voluntary abiding in the country be the proof and intimation of that conſent, by what arguments ſhall we defend the right, which ſovereigns univerſally aſſume, of prohibiting, when they pleaſe, the departure of their ſubjects out of the realm?

Again, when it is contended that the taking and holding poſſeſſion of land amounts to an acknowledgment of the ſovereign, and a virtual promiſe of allegiance to his laws, it is neceſſary to the validity of the argument to prove, that the inhabitants, who firſt compoſed and conſtituted the ſtate, collectively poſſeſſed a right to the ſoil of the country—a right to parcel it out to whom they pleaſed, and to annex to the donation what conditions they thought fit. How came they by this right? An agreement amongſt themſelves would not confer it: that could only adjuſt what already belonged to them. A ſociety of men vote themſelves to be the owners of a region of the world; does that vote, unaccompanied eſpecially with any culture, incloſure, or proper act of occupation, make it theirs? does it entitle them to exclude others from it, or to dictate the conditions upon which it ſhall be enjoyed? Yet this original collective right and ownerſhip, is the foundation of all the reaſoning, by which the duty of allegiance is inferred from the poſſeſſion of land.

The theory of government, which affirms the exiſtence and the obligation of a ſocial compact, would, after all, merit little diſcuſſion, and however groundleſs and unneceſſary, ſhould receive no oppoſition from us, did it not appear to lead to concluſions unfavourable to the improvement, and to the peace of human ſociety.

1ſt. Upon the ſuppoſition that government was firſt erected by, and that it derives all its juſt authority from, reſolutions entered into by a convention of the people, it is capable of being preſumed, that many points were ſettled by that convention, anterior to the eſtabliſhment of the ſubſiſting legiſlature, and which the legiſlature, conſequently, has no right to alter, or interfere with. Theſe points are called the *fundamentals* of the conſtitution; and as it is impoſſible to determine how many, or what they are, the ſuggeſting of any ſuch, ſerves extremely to embarraſs the deliberations of the legiſlature, and affords a dangerous pretence for diſputing the authority of the laws. It was this ſort of reaſoning (ſo far as reaſoning of any kind was employed in the queſtion) that produced in this nation the doubt, which ſo much agitated the minds of men in the reign of the ſecond Charles, whether an Act of Parliament could of right alter or limit the ſucceſſion of the crown.

2dly. If it be by virtue of a compact, that the ſubject owes obedience to civil government, it will follow, that he ought to abide by the form of government which he finds eſtabliſhed, be it ever ſo abſurd, or inconvenient. He is bound by his bargain. It is not permitted to any man to retreat from his engagement, merely becauſe he finds the performance diſadvantageous, or becauſe he has an opportunity of entering into a better. This law of contracts is univerſal: and to call the relation between the ſovereign and the ſubjects a contract, yet not to apply to it the rules, or allow of the effects of a contract, is an arbitrary uſe of names, and an unſteadineſs in reaſoning, which can teach nothing. Reſiſtance to the *encroachments* of the ſupreme magiſtrate may be juſtified upon this principle; recourſe to arms, for the purpoſe of bringing about an amendment to the conſtitution, never can. No form of government contains a proviſion for its own diſſolution; and few governors will conſent to the extinction, or even to any abridgment of their own power. It does not therefore appear, how deſpotic governments can ever, in conſiſtency with the obligation of the ſubject, be changed, or mitigated. Deſpotiſm is the conſtitution of many ſtates: and whilſt a deſpotic prince exacts from his ſubjects the moſt rigorous ſervitude, according to this account, he is only holding them to their agreement. A people may vindicate, by force, the rights which the conſtitution has left them; but every attempt to narrow the prerogative of the crown, by *new* limitations, and in oppoſition to the will of the reigning prince, whatever opportunities may invite, or ſucceſs follow it, muſt be condemned as an infraction of the compact between the ſovereign and the ſubject.

3dly. Every violation of the compact on the part of the governor releaſes the ſubject from his allegiance, and diſſolves the government. I do not perceive how we can avoid this conſequence, if we found the duty of allegiance upon compact, and confeſs any analogy between the ſocial compact and other contracts. In private contracts, the violation and non-performance of the conditions, by one of the parties, vacates the obligation of the other. Now the terms and articles of the ſocial compact, being no where extant or expreſſed; the rights and offices of the adminiſtrator of an empire being ſo many and various; the imaginary and controverted line of his prerogative being ſo liable to be overſtepped in one part or other of it: the poſition that every ſuch tranſgreſſion amounts to a forfeiture of the government, and conſequently authorizes the people to withdraw their obedience and provide for themſelves by a new ſettlement, would endanger the ſtability of every political fabric in the world, and has in fact always ſupplied the diſaffected with a topic of ſeditious declamation. If occaſions have ariſen, in which this plea has been reſorted to with juſtice and ſucceſs, they have been occaſions, in which a revolution was defenſible upon other and plainer principles. The plea itſelf is at all times captious and unſafe.

Wherefore, rejecting the intervention of a campact, as unfounded in its principle, and dangerous in the application, we aſſign for the only ground of the ſubject's obligation, THE WILL OF GOD, AS COLLECTED FROM EXPEDIENCY.

The ſteps by which the argument proceeds are few and direct. "It is the will of God that the happineſs of human life be promoted;"—this is the firſt ſtep, and the foundation not only of this but of every moral concluſion. "Civil ſociety conduces to that end;"—this is the ſecond propoſition. "Civil ſocieties cannot be upheld, unleſs in each, the intereſt of the whole ſociety be binding upon every part and member of it;" this is the third ſtep, and conducts us to the concluſion, namely, "that ſo long as the intereſt of the whole ſociety requires it, that is, ſo long as the eſtabliſhed government cannot be reſiſted or changed, without public inconveniency, it is the will of God (which *will* univerſally determines our duty) that the eſtabliſhed government be obeyed,"—and no longer.

This principle being admitted, the juſtice of every particular caſe of reſiſtance, is reduced to a computation of the quantity of the danger and grievance on the one ſide, and of the probability and expenſe of redreſſing it on the other.

But who ſhall judge of this? We anſwer, "Every man for himſelf." In contentions between the ſovereign and the ſubject, the parties acknowledge no common arbitrator; and it would be abſurd to refer the deciſion to *thoſe* whoſe conduct has provoked the queſtion, and whoſe own intereſt, authority, and fate, are immediately concerned in it. The danger of error and abuſe is no objection to the rule of expediency, becauſe every other rule is liable to the ſame or greater; and every rule that can be propounded upon the ſubject (like all rules indeed which appeal to, or bind, the conſcience) muſt in the application depend upon private judgment. It may be obſerved, however, that it ought equally to be accounted the exerciſe of a man's private judgment, whether he be determined by reaſonings and concluſions of his own, or ſubmit to be directed by the advice of others, provided he be free to chooſe his guide.

We proceed to point out ſome eaſy but important inferences, which reſult from the ſubſtitution of *public expediency* into the place of all implied compacts, promiſes, or conventions whatſoever.

I. It may be as much a duty, at one time, to reſiſt government, as it is at another, to obey it—to wit, whenever more advantage will, in our opinion, accrue to the community from reſiſtance, than miſchief.

II. The lawfulneſs of reſiſtance, or the lawfulneſs of a revolt, does not depend alone upon the grievance which is ſuſtained or feared, but alſo upon the probable expenſe and event of the conteſt. They who concerted the Revolution in England were juſtifiable in their counſels, becauſe from the apparent diſpoſition of the nation, and the ſtrength and character of the parties engaged, the meaſure was likely to be brought about with little miſchief or bloodſhed; whereas, it might have been a queſtion with many friends of their country, whether the injuries then endured and threatened, would have authorized the renewal of a doubtful civil war.

III. Irregularity in the firſt foundation of a ſtate, or ſubſequent violence, fraud, or injuſtice in getting poſſeſſion of the ſupreme power, are not ſufficient reaſons for reſiſtance, after the government is once peaceably ſettled. No ſubject of the Britiſh empire conceives himſelf engaged to vindicate the juſtice of the Norman claim, or conqueſt, or apprehends that his duty in any manner depends upon that controverſy. So likewiſe if the Houſe of Lancaſter, or even the poſterity of Cromwell, had been at this day ſeated upon the throne of England, we ſhould have been as little concerned to inquire how the founder of the family came there. No civil conteſts are ſo futile, although none have been ſo furious and ſanguinary, as thoſe which are excited by a diſputed ſucceſſion.

IV. Not every invaſion of the ſubject's rights, or liberty, or of the conſtitution; not every breach of promiſe, or of oath; not every ſtretch of prerogative, abuſe of power, or neglect of duty by the chief magiſtrate, or by the whole or any branch of the legiſlative body, juſtifies reſiſtance, unleſs theſe crimes draw after them public conſequences of ſufficient magnitude to outweigh the evils of civil diſturbance. Nevertheleſs, every violation of the conſtitution ought to be watched with jealouſy, and reſented as *ſuch*, beyond what the quantity of eſtimable damage would require or warrant; becauſe a known and ſettled uſage of governing affords the only ſecurity againſt the enormities of uncontrolled dominion, and becauſe this ſecurity is weakened by every encroachment which is made without oppoſition, or oppoſed without effect.

V. No uſage, law, or authority whatever, is ſo binding that it need or ought to be continued, when it may be changed with advantage to the community. The family of the prince, the order of ſucceſſion, the prerogative of the crown, the form and parts of the legiſlature, together with the reſpective powers, office, duration and mutual dependency of the ſeveral parts, are all only ſo many *laws*, mutable like other laws whenever expediency requires, either by the ordinary act of the legiſlature, or, if the occaſion deſerve it, by the interpoſition of the people. Theſe points are wont to be approached with a kind of awe; they are repreſented to the mind as principles of the conſtitution ſettled by our anceſtors, and, being ſettled, to be no more committed to innovation or debate; as foundations never to be ſtirred; as the terms and conditions of the ſocial compact, to which every citizen of the ſtate has engaged his fidelity, by virtue of a promiſe, which he cannot now recall. Such reaſons have no place in our ſyſtem; to us, if there be any good reaſon for treating theſe with more deference and reſpect than other laws, it is, either the advantage of the preſent conſtitution of government (which reaſon muſt be of different force in different countries) or becauſe in all countries, it is of importance, that the form and uſage of governing be acknowledged and underſtood, as well by the governors as by the governed, and becauſe the ſeldomer it is changed, the more perfectly it will be known by both ſides.

VI. As all civil obligation is reſolved into expediency, what, it may be aſked, is the difference between the obligation of an Engliſhman and a Frenchman? or, why is a Frenchman bound in conſcience to bear any thing from his king, which an Engliſhman would not be bound to bear, ſince the obligation of both is founded in the ſame reaſon? Their conditions may differ, but their *rights*, according to this account, ſhould ſeem to be equal; and yet we are accuſtomed to ſpeak of the *rights* as well as of the happineſs of a free people, compared with what belong to the ſubjects of abſolute monarchies: how, you will ſay, can this compariſon be explained, unleſs we refer to a difference in the compacts, by which they are reſpectively bound?—This is a fair queſtion, and the anſwer to it will afford a further illuſtration of our principles. We admit then, that there are many things which a Frenchman is bound in conſcience, as well as by coertion, to endure at the hands of his prince, to which an Engliſhman would not be obliged to ſubmit; but we aſſert, that it is for theſe two reaſons alone: *firſt*, becauſe the ſame act of the prince, is not the ſame grievance where it is agreeable to the conſtitution, and where it infringes it: *ſec-*

ondly, becauſe redreſs in the two caſes is not equally attainable. Reſiſtance cannot be attempted with equal hopes of ſucceſs, or with the ſame proſpect of receiving ſupport from others, where the people are reconciled to their ſufferings, as where they are alarmed by innovation. In this way, and no otherwiſe, the ſubjects of different ſtates poſſeſs different civil rights; the duty of obedience is defined by different boundaries; and the point of juſtifiable reſiſtance placed at different parts of the *ſcale* of ſuffering —all which is ſufficiently intelligible without a ſocial compact.

VII. "The intereſt of the whole ſociety is binding upon every part of it." No rule, ſhort of this, will provide for the ſtability of civil government, or for the peace and ſafety of ſocial life. Wherefore, as individual members of the ſtate are not permitted to purſue their private emolument to the prejudice of the community, ſo is it equally a conſequence of this rule, that no particular colony, province, town, or diſtrict, can juſtly concert meaſures for their ſeparate intereſt, which ſhall appear at the ſame time to diminiſh the *ſum* of public proſperity. I do not mean, that it is neceſſary to the juſtice of a meaſure, that it profit each and every part of the community; for as the happineſs of the whole may be increaſed, whilſt that of ſome parts is diminiſhed, it is poſſible, that the conduct of one part of an empire may be detrimental to ſome other part, and yet juſt, provided one part gain more in happineſs, than the other part loſes, ſo that the common weal be augmented by the change: but what I affirm is, that thoſe counſels can never be reconciled with the obligations reſulting from civil union, which cauſe the *whole* happineſs of the ſociety to be impaired for the conveniency of a *part*. This concluſion is applicable to the queſtion of right between Great Britain and her revolted colonies. Had I been an American, I ſhould not have thought it enough to have had it even demonſtrated, that a ſeparation from the parent ſtate would produce effects beneficial to America; my relation to that ſtate impoſed upon me a further inquiry, namely, whether the whole happineſs of the empire was likely to be promoted by ſuch a meaſure?—Not indeed the happineſs of every part; that was not neceſſary, nor to be expected—but whether what Great Britain would loſe by the ſeparation was likely to be compenſated to the joint ſtock of happineſs, by the advantages which America would receive from it. The conteſted claims of ſovereign ſtates, and their remote dependencies, may be ſubmitted to the adjudication of this rule with mutual ſafety. A public advantage is meaſured by the advantage which each individual receives, and by the number of thoſe who receive it. A public evil is compounded of the ſame proportions. Whilſt, therefore, a colony is ſmall, or a province thinly inhabited, if a competition of intereſts ariſe between the original country and their acquired dominions, the former ought to be preferred, becauſe it is fit, that, if one muſt neceſſarily be ſacrificed, the leſs give place to the greater: but when, by an increaſe of population, the intereſt of the provinces begins to bear a conſiderable proportion to the *entire* intereſt of the community, it is poſſible that they may ſuffer ſo much by their ſubjection, that not only theirs, but the whole happineſs of the empire may be obſtructed by their union. The rule and principle of the calculation being ſtill the ſame, the *reſult* is different; and this difference begets a new ſituation, which entitles the ſubordinate parts of the ſtate to more equal terms of confederation, and, if theſe be refuſed, to independency.

Chapter IV.

THE DUTY OF CIVIL OBEDIENCE, AS STATED IN THE CHRISTIAN SCRIPTURES.

WE affirm, that, as to the *extent* of our civil rights and obligations, Chriſtianity hath left us where ſhe found us; that ſhe hath neither altered nor aſcertained it; that the New Teſtament contains not one paſſage, which, fairly interpreted, affords either argument or objection applicable to any concluſions upon the ſubject, that are deduced from the law and religion of nature.

The only paſſages which have been ſeriouſly alleged in the controverſy, or which it is neceſſary for us to ſtate and examine, are the two following; the one extracted from St. Paul's Epiſtle to the Romans, the other from the Firſt General Epiſtle of St. Peter.

ROMANS xiii. 1—7.

"Let every ſoul be ſubject unto the higher powers. For there is no power but of God; the powers that be, are ordained of God. Whoſoever therefore reſiſteth the power, reſiſteth the ordinance of God: and they that reſiſt, ſhall receive to themſelves damnation. For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? Do that which is good, and thou ſhalt have praiſe of the ſame: for he is the miniſter of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the ſword in vain: for he is the miniſter of God, a revenger to *execute* wrath upon him that doeth evil. Wherefore ye muſt needs be ſubject, not only for wrath, but alſo for conſcience ſake. For, for this cauſe pay you tribute alſo: for they are God's miniſters, attending continually upon this very thing. Render therefore to all their dues: tribute to whom tribute is due, cuſtom to whom cuſtom, fear to whom fear, honour to whom honour."

1 PETER ii. 13—18.

"Submit yourſelves to every ordinance of man for the Lord's ſake: whether it be to the king as ſupreme; or unto governors, as unto them that are ſent by him for the puniſhment of evil doers, and for the praiſe of them that do well. For ſo is the will of God, that with well-doing ye may put to ſilence the ignorance of fooliſh men: as free, and not uſing your liberty for a cloak of maliciouſneſs, but as the ſervants of God."

To comprehend the proper import of theſe inſtructions, let the reader reflect, that upon the ſubject of civil obedience there are two queſtions: the firſt, whether to obey government be a moral duty and obligation upon the conſcience at all; the ſecond, how far, and to what caſes, that obedience ought to extend;—that theſe two queſtions are ſo diſtinguiſhable in the imagination, that it is poſſible to treat of the one, without any thought of the other; and laſtly, that if expreſſions which relate to one of theſe queſtions be transferred and applied to the other, it is with great danger of giving them a ſignification very different from the author's meaning. This diſtinction is not only poſſible, but natural. If I met with a perſon, who appeared to entertain doubts, whether civil obedience were a moral duty, which ought to be voluntarily diſcharged, or whether it were not a mere ſubmiſſion to force, like that, which we yield to a robber, who holds a piſtol to our breaſt, I ſhould repreſent to him the uſe and offices of civil government, the end and the neceſſity of civil ſubjection; or, if I preferred a different theory, I ſhould explain to him the ſocial compact, urge him with the obligation and the equity of his implied promiſe and tacit conſent to be governed by the laws of the ſtate from which he received protection; or I ſhould argue, perhaps, that nature herſelf dictated the law of ſubordination, when ſhe planted within us an inclination to aſſociate with our ſpecies, and framed us with capacities ſo various and unequal. From whatever principle I ſet out, I ſhould labour to infer from it this concluſion, "That obedience to the ſtate is to be numbered amongſt the relative duties of human life, for the tranſgreſſion of which we ſhall be accountable at the tribunal of divine juſtice, whether the magiſtrate be able to puniſh us for it or not;" and being arrived at this concluſion, I ſhould ſtop, having delivered the concluſion itſelf, and throughout the whole argument expreſſed the obedience, which I inculcated, in the moſt general and unqualified terms, all reſervations and reſtrictions being ſuperfluous, and foreign to the doubts I was employed to remove.

If in a ſhort time afterwards, I ſhould be accoſted by the ſame perſon, with complaints of public grievances, of exorbitant taxes, of acts of cruelty and oppreſſion, of tyrannical encroachments upon the ancient or ſtipulated rights of the people, and ſhould be conſulted whether it were lawful to revolt, or juſtifiable to join in an attempt to ſhake off the yoke by open reſiſtance; I ſhould certainly conſider myſelf as having a caſe and queſtion before me very different from the former. I ſhould now define and diſcriminate. I ſhould reply, that if public expediency be the foundation, it is alſo the meaſure of civil obedience; that the obligation of ſubjects and ſovereigns is reciprocal; that the duty of allegiance, whether it be founded in utility or compact, is neither unlimited nor unconditional; that peace may be purchaſed too dear; that patience becomes culpable puſillanimity, when it ſerves only to encourage our rulers to increaſe the weight of our burthen, or to bind it the faſter; that the ſubmiſſion, which ſurrenders the liberty of a nation, and entails ſlavery upon future generations, is enjoined by no law of rational morality: finally, I ſhould inſtruct the inquirer to compare the peril and expenſe of his enterprize, with the effects it was expected to produce, and to make choice of the alternative, by which, not his own preſent relief or profit, but the whole and permanent intereſt of the ſtate was likely to be beſt promoted. If any one who had been preſent at both theſe converſations ſhould upbraid me with change or inconſiſtency of opinion, ſhould retort upon me the paſſive doctrine I before taught, the large and abſolute terms in which I then delivered leſſons of obedience and ſubmiſſion, I ſhould account myſelf unfairly dealt with. I ſhould reply, that the only difference which the language of the two converſations preſented was, that I added now many exceptions and limitations, which were omitted or unthought of then; that this difference aroſe naturally from the two occaſions, ſuch exceptions being as neceſſary to the ſubject of our preſent conference, as they would have been ſuperfluous and unſeaſonable in the former.

Now the difference in theſe two converſations is preciſely the diſtinction to be taken in interpreting thoſe paſſages of ſcripture, concerning which we are debating. They inculcate the *duty*, they do not deſcribe the *extent* of it. They enforce the obligation by the proper ſanctions of Chriſtianity, without intending either to enlarge or contract, without conſidering indeed the limits by which it is bounded. This is alſo the method, in which the ſame Apoſtles enjoin the duty of ſervants to their maſters, of children to their parents, of wives to their huſbands. "Servants, be ſubject to your maſters."—"Children, obey your parents in all things."—"Wives, ſubmit yourſelves unto your own huſbands." The ſame conciſe and abſolute form of expreſſion occurs in all theſe precepts; the ſame ſilence, as to any exceptions or diſtinctions; yet no one doubts, but that the commands of maſters, parents, and huſbands, are often ſo immoderate, unjuſt, and inconſiſtent with other obligations, that they both may and ought to be reſiſted. In letters or diſſertations written profeſſedly upon ſeparate articles of morality, we might with more reaſon have looked for a preciſe delineation of our duty, and ſome degree of modern accuracy in the rules which were laid down for our direction; but in thoſe ſhort collections of practical maxims, which compoſe the concluſion, or ſome ſmall portion, of a doctrinal or perhaps controverſial epiſtle, we cannot be ſurpriſed to find the author more ſolicitous to impreſs the duty, than curious to enumerate exceptions.

The conſideration of this diſtinction is alone ſufficient to vindicate theſe paſſages of ſcripture from any explanation, which may be put upon them, in favour of an unlimited paſſive obedience. But if we be permitted to aſſume a ſuppoſition, which many commentators proceed upon as a certainty, that the firſt Chriſtians privately cheriſhed an opinion, that their converſion to Chriſtianity entitled them to new immunities, to an exemption as of *right* (however they might give way to neceſſity) from the authority of the Roman ſovereign, we are furniſhed with a ſtill more apt and ſatisfactory interpretation of the Apoſtles' words. The two paſſages apply with great propriety to the refutation of this error; they teach the Chriſtian convert to obey the magiſtrate "for the Lord's ſake,"—"not only for wrath, but for conſcience ſake;"—"that there is no power but of God;"—"that the powers that be," even the preſent rulers of the Roman empire, though heathens and uſurpers, ſeeing they are in poſſeſſion of the actual and neceſſary authority of civil government, "are ordained of God," and, conſequently, entitled to receive obedience from thoſe who profeſs themſelves the peculiar ſervants of God, in a greater (certainly not in a leſs) degree, than from any others. They briefly deſcribe the office of civil governors, "the puniſhment of evil doers, and the praiſe of them that do well;" from which deſcription of the uſe of government, they juſtly infer the duty of ſubjection, which duty, being as extenſive as the reaſon upon which it is founded, belongs to Chriſtians no leſs than to the heathen members of the community. If it be admitted, that the two Apoſtles wrote with a view to this particular queſtion, it will be confeſſed, that their words cannot be transferred to a queſtion totally different from this, with any certainty of carrying along with us their authority and intention. There exiſts no reſemblance between the caſe of a primitive convert, who diſputed the juriſdiction of the Roman government over a diſciple of Chriſtianity, and *his*, who, acknowledging the general authority of the ſtate over all its ſubjects, doubts, whether that authority be not, in ſome important branch of it, ſo ill conſtituted or abuſed, as to warrant the endeavours of the people to bring about a reformation by force; nor can we judge what reply the Apoſtles would have made to this *ſecond* queſtion, if it had been propoſed to them, from any thing they have delivered upon the *firſt*; any more than in the two conſultations above deſcribed, it could be known beforehand, what I would ſay in the latter, from the anſwer which I gave to the former.

The only defect in this account is, that neither the ſcriptures, nor any ſubſequent hiſtory of the early ages of the church, furniſh any direct atteſtation of the exiſtence of ſuch diſaffected ſentiments amongſt the primitive converts. They ſupply indeed ſome circumſtances, which render probable the opinion, that extravagant notions of the political rights of the Chriſtian ſtate were at that time entertained by many proſelytes to the religion. From the queſtion propoſed to Chriſt, "Is it lawful to give tribute unto Cæſar?" it may be preſumed that doubts had been ſtarted in the Jewiſh ſchools concerning the obligation, or even the lawfulneſs, of ſubmiſſion to the Roman yoke. The accounts delivered by Joſephus, of various inſurrections of the Jews of that and the following age, excited by this principle, or upon this pretence, confirm the preſumption. Now, as the Chriſtians were at firſt chiefly taken from the Jews, confounded with them by the reſt of the world, and, from the affinity of the two religions, apt to intermix the doctrines of both, it is not to be wondered at, that a tenet, ſo flattering to the ſelf-importance of thoſe who embraced it, ſhould have been communicated to the new inſtitution. Again, the teachers of Chriſtianity, amongſt the privileges which their religion conferred upon its profeſſors, were wont to extol the "*liberty* into which they were called"—"in which Chriſt had made them free." This liberty, which was intended of a deliverance from the various ſervitude, in which they had heretofore lived, to the domination of ſinful paſſions, to the ſuperſtition of the Gentile idolatry, or the incumbered ritual of the Jewiſh diſpenſation, might by ſome be interpreted to ſignify an emancipation from all reſtraint, which was impoſed by an authority merely human. At leaſt they might be repreſented by their enemies as maintaining notions of this dangerous tendency. To ſome error or calumny of this kind, the words of St. Peter ſeem to allude: "For ſo is the will of God, that with well-doing ye may put to ſilence the ignorance of fooliſh men: as free, and not uſing your liberty for a cloak of malicioufneſs, (i. e. ſedition) but as the ſervants of God." After all, if any one think this conjecture too feebly ſupported by teſtimony, to be relied upon in the interpretation of ſcripture, he will then revert to the conſiderations alleged in the preceding part of this Chapter.

After ſo copious an account of what we apprehend to be the general deſign and doctrine of theſe much agitated paſſages, little need be added in explanation of particular clauſes. St. Paul has ſaid, "Whoſoever reſiſteth the power, reſiſteth the ordinance of God." This phraſe, "the ordinance of God," is by many ſo interpreted, as to authorize the moſt exalted and ſuperſtitious ideas of the regal character. But, ſurely, ſuch interpreters have ſacrificed truth to adulation. For, in the firſt place, the expreſſion, as uſed by St. Paul, is juſt as applicable to one kind of government, and to one kind of ſucceſſion, as to another—to the elective magiſtrates of a pure republic, as to an abſolute hereditary monarch. In the next place, it is not affirmed of the ſupreme magiſtrate excluſively, that *he* is the ordinance of God; the title, whatever it imports, belongs to every inferior officer of the ſtate as much as to the higheſt. The divine right of *kings* is, like the divine right of other magiſtrates—the law of the land, or even actual and quiet poſſeſſion of their office; a right ratified, we humbly preſume, by the divine approbation, ſo long as obedience to their authority appears to be neceſſary or conducive to the common welfare. Princes are ordained of God by virtue only of that general decree, by which he aſſents, and adds the ſanction of his will, to every law of ſociety, which promotes his own purpoſe, the communication of human happineſs: according to which idea of their origin and conſtitution, (and without any repugnancy to the words of St. Paul) they are by St. Peter denominated the *ordinance of man.*

Chapter V.

OF CIVIL LIBERTY.

CIVIL *Liberty is the not being reſtrained by any Law, but what conduces in a greater degree to the public welfare.*

To do what we will is natural liberty; to do what we will, conſiſtently with the intereſt of the community to which we belong, is civil liberty; that is to ſay, the only liberty to be deſired in a ſtate of civil ſociety.

I ſhould wiſh, no doubt, to be allowed to act in every inſtance as I pleaſed; but I reflect that the reſt alſo of mankind would then do the ſame; in which ſtate of univerſal independence and ſelf-direction, I ſhould meet with ſo many checks and obſtacles to my own will, from the interference and oppoſition of other men's, that not only my happineſs, but my liberty, would be leſs, than whilſt the whole community were ſubject to the dominion of equal laws.

The boaſted liberty of a ſtate of nature exiſts only in a ſtate of ſolitude. In every kind and degree of union and intercourſe with his ſpecies, it is poſſible that the liberty of the individual may be augmented by the very laws which reſtrain it: becauſe he may gain more from the limitation of other men's freedom than he ſuffers by the diminution of his own. Natural liberty is the right of common upon a waſte; civil liberty is the ſafe, excluſive, unmoleſted enjoyment of a cultivated incloſure.

The definition of civil liberty above laid down, imports that the laws of a free people impoſe no reſtraint upon the private will of the ſubject, which do not conduce in *a greater degree* to the public happineſs:

by which it is intimated, 1. that reſtraint itſelf is an evil; 2. that this evil ought to be overbalanced by ſome public advantage; 3. that the proof of this advantage lies upon the legiſlature; 4. that a law being found to produce no ſenſible good effects, is a ſufficient reaſon for repealing it, as adverſe and injurious to the rights of a free citizen, without demanding ſpecific evidence of its bad effects. This maxim might be remembered with advantage in a reviſion of many laws of this country; eſpecially of the game laws; of the poor laws, ſo far as they lay reſtrictions upon the poor themſelves—of the laws againſt papiſts and diſſenters: and, amongſt people enamoured to exceſs and jealous of their liberty, it ſeems a matter of ſurpriſe that this principle has been ſo imperfectly attended to.

The degree of actual liberty always bearing, according to this account of it, a reverſed proportion to the number and ſeverity of the *reſtrictions* which are either uſeleſs, or the utility of which does not outweigh the evil of the reſtraint; it follows that every nation poſſeſſes ſome, no nation perfect liberty; that this liberty may be enjoyed under every form of government; that it may be impaired indeed, or increaſed, but that it is neither gained, nor loſt, nor recovered, by any ſingle regulation, change, or event whatever; that, conſequently, thoſe popular phraſes which ſpeak of a free people; of a nation of ſlaves; which call one revolution the era of liberty; or another the loſs of it; with many expreſſions of a like abſolute form, are intelligible only in a comparative ſenſe.

Hence alſo we are enabled to apprehend the diſtinction between *perſonal* and *civil* liberty. A citizen of the freeſt republic in the world may be impriſoned for his crimes; and though his perſonal freedom be reſtrained by bolts and fetters, ſo long as his confinement is the effect of a beneficial public law, his civil liberty is not invaded. If this inſtance appear dubious, the following will be plainer. A paſſenger from the Levant, who, upon his return to England, ſhould be conveyed to a lazaretto by an order of quarantine, with whatever impatience he might deſire his enlargement, and though he ſaw a guard placed at the door to oppoſe his eſcape, or even ready to deſtroy his life if he attempted it, would hardly accuſe government of encroaching upon his civil freedom; nay, might, perhaps, be all the while congratulating himſelf that he had at length ſet his foot again in a land of liberty. The manifeſt expediency of the meaſure not only juſtifies it, but reconciles the moſt odious confinement with the perfect poſſeſſion, and the loftieſt notions of civil liberty. And if this be true of the coercion of a priſon, that it is compatible with a ſtate of *civil* freedom, it cannot with reaſon be diſputed of thoſe more moderate conſtraints which the ordinary operation of government impoſes upon the will of the individual. It is not the rigour, but the inexpediency of laws and acts of authority, which makes them tyrannical.

There is another idea of civil liberty, which, though neither ſo ſimple, nor ſo accurate as the former, agrees better with the ſignification, which the uſage of common diſcourſe, as well as the example of many reſpectable writers upon the ſubject, has affixed to the term. This idea places liberty in ſecurity; making it to conſiſt not merely in an actual exemption from the conſtraint of uſeleſs and noxious laws and acts of dominion, but in being free from the *danger* of having any ſuch hereafter impoſed or exerciſed. Thus, ſpeaking of the political ſtate of modern Europe, we are accuſtomed to ſay of Sweden, that ſhe hath loſt her *liberty* by the revolution which lately took place in that country; and yet we are aſſured that the people continue to be governed by the ſame laws as before, or by others which are wiſer, milder, and more equitable. What then have they loſt? They have loſt the power and functions of their diet; the conſtitution of their ſtates and orders, whoſe deliberations and concurrence were required in the formation and eſtabliſhment of every public law; and thereby have parted with the ſecurity which they poſſeſſed againſt any attempts of the crown to harraſs its ſubjects, by oppreſſive and uſeleſs exertions of prerogative. The loſs of this ſecurity we denominate the loſs of liberty. They have changed not their laws, but their legiſlature; not their enjoyment, but their ſafety; not their preſent burthens, but their proſpects of future grievances: and this we pronounce a change from the condition of freemen to that of ſlaves. In like manner, in our own country, the act of parliament, in the reign of Henry the Eighth, which gave to the king's proclamation the force of law, has properly been called a complete and formal ſurrender of the liberty of the nation; and would have been ſo, although no proclamation were iſſued in purſuance of theſe new powers, or none but what was recommended by the higheſt wiſdom and utility. The ſecurity was gone. Were it probable, that the welfare and accommodation of the people would be as ſtudiouſly, and as providently, conſulted in the edicts of a deſpotic prince, as by the reſolutions of a popular aſſembly, then would an abſolute form of government be no leſs free than the pureſt democracy. The different degree of care and knowledge of the public intereſt which may reaſonably be expected from the different form and compoſition of the legiſlature, conſtitutes the diſtinction, in reſpect of liberty, as well between theſe two extremes, as between all the intermediate modifications of civil government.

The definitions which have been framed of civil liberty, and which have become the ſubject of much unneceſſary altercation, are moſt of them adapted to this idea. Thus one political writer makes the very eſſence of the ſubject's liberty to conſiſt in his being governed by no laws but thoſe to which he hath actually conſented; another is ſatisfied with an indirect and virtual conſent; another again places civil liberty in the ſeparation of the legiſlative and executive offices of government; another in the being governed by *law*, that is, by known, preconſtituted, inflexible rules of action and adjudication; a fifth in the excluſive right of the people to tax themſelves by their own repreſentatives; a ſixth in the freedom and purity of elections of repreſentatives; a ſeventh in the tontrol which the democratic part of the conſtitution poſſeſſes over the military eſtabliſhment. Concerning which, and ſome other ſimilar accounts of civil liberty, it may be obſerved, that they all labour under one inaccuracy, viz. that they deſcribe not ſo much liberty itſelf, as the ſafe-guards and preſervatives of liberty: for example, a man's being governed by no laws, but thoſe to which he has given his conſent, were it practicable, is no otherwiſe neceſſary to the enjoyment of civil liberty, than as it affords a probable ſecurity againſt the dictation of laws, impoſing ſuperfluous reſtrictions upon his private will. This remark is applicable to the reſt. The diverſity of theſe definitions will not ſurpriſe us, when we conſider that there is no contrariety or oppoſition amongſt them whatever; for, by how many different proviſions and precautions civil liberty is fenced and protected, ſo many different accounts of liberty itſelf, all ſufficiently conſiſtent with truth and with each other, may, according to this mode of explaining the term, be framed and adopted.

Truth cannot be offended by a definition, but propriety may. In which view thoſe definitions of liberty ought to be rejected, which, by making that eſſential to civil freedom which is unattainable in experience, inflame expectations that can never be gratified, and diſturb the public content with complaints, which no wiſdom or benevolence of government can remove.

It will not be thought extraordinary, that an idea, which occurs ſo much oftener as the ſubject of panegyric and careleſs declamation, than of juſt reaſoning or correct knowledge, ſhould be attended with uncertainty and confuſion; or that it ſhould be found impoſſible to contrive a definition, which may include the numerous, unſettled, and ever varying ſignifications, which the term is made to ſtand for, and at the ſame time accord with the condition and experience of ſocial life.

Of the two ideas that have been ſtated of civil liberty, whichever we aſſume, and whatever reaſoning we found upon them, concerning its extent, nature, value and preſervation, this is the concluſion—that *that* people, government, and conſtitution, is the *freeſt*, which makes the beſt proviſion for the enacting of expedient and ſalutary laws.

Chapter VI.

OF DIFFERENT FORMS OF GOVERNMENT.

AS a ſeries of appeals muſt be finite, there neceſſarily exiſts in every government a power from which the conſtitution has provided no appeal; and which power, for that reaſon, may be termed abſolute, omnipotent, uncontrollable, arbitrary, deſpotic; and is alike ſo in all countries.

The perſon, or aſſembly, in whom this power reſides, is called the *ſovereign*, or the ſupreme power of the ſtate.

Since to the ſame power univerſally appertains the office of eſtabliſhing public laws, it is called alſo the *legiſlature* of the ſtate.

A government receives its denomination from the form of the legiſlature; which form is likewiſe what we commonly mean by the *conſtitution* of a country.

Political writers enumerate three principal forms of government, which, however, are to be regarded rather as the ſimple forms, by ſome combination and intermixture of which all actual governments are compoſed, than as any where exiſting in a pure and elementary ſtate. Theſe forms are:

I. Deſpotiſm, or abſolute MONARCHY, where the legiſlature is in a ſingle perſon.

II. An ARISTOCRACY, where the legiſlature is in a ſelect aſſembly, the members of which either fill up by election the vacancies in their own body, or ſucceed to their places in it by inheritance, property, tenure of certain lands, or in reſpect of ſome perſonal right or qualification.

III. A REPUBLIC, or democracy, where the people at large, either collectively or by repreſentation, conſtitute the legiſlature.

The ſeparate advantages of MONARCHY are, unity of council, activity, deciſion, ſecrecy, diſpatch; the military ſtrength and energy which reſult from theſe qualities of government; the excluſion of popular and ariſtocratical contentions; the preventing, by a known rule of ſucceſſion, of all competition for the ſupreme power; and thereby repreſſing the hopes, intrigues, and dangerous ambition of aſpiring citizens.

The miſchiefs, or rather the dangers of MONARCHY are, tyranny, expenſe, exaction, military domination; unneceſſary wars waged to gratify the paſſions of an individual; riſk of the character of the reigning prince; ignorance in the governors of the intereſts and accommodation of the people, and a conſequent deficiency of ſalutary regulations; want of conſtancy and uniformity in the rules of government, and, proceeding from thence, inſecurity of perſon and property.

The ſeparate advantage of an ARISTOCRACY conſiſts in the wiſdom which may be expected from experience and education—a permanent council naturally poſſeſſes experience; and the members, who ſucceed to their places in it by inheritance, will, probably, be trained and educated with a view to the ſtations, which they are deſtined by their birth to occupy.

The miſchiefs of an ARISTOCRACY are, diſſenſions in the ruling orders of the ſtate, which, from the want of a common ſuperior, are liable to proceed to the moſt deſperate extremities; oppreſſion of the lower orders by the privileges of the higher, and by laws partial to the ſeparate intereſts of the law-makers.

The advantages of a REPUBLIC are, liberty, or exemption from needleſs reſtrictions; equal laws; regulations adapted to the wants and circumſtances of the people; public ſpirit, frugality, averſeneſs to war; the opportunities which democratic aſſemblies afford to men of every deſcription, of producing their abilities and counſels to public obſervation, and the exciting thereby, and calling forth to the ſervice of the commonwealth, the faculties of its beſt citizens.

The evils of a REPUBLIC are, diſſenſion, tumults, faction; the attempts of powerful citizens to poſſeſs themſelves of the empire; the confuſion, rage, and clamour, which are the inevitable conſequences of aſſembling multitudes, and of propounding queſtions of ſtate to the diſcuſſion of the people; the delay and diſcloſure of public counſels and deſigns; and the imbecility of meaſures retarded by the neceſſity of obtaining the conſent of numbers; laſtly, the oppreſſion of the provinces which are not admitted to a participation in the legiſlative power.

A *mixed* government is compoſed by the combination of two or more of the ſimple forms of government above deſcribed; and, in whatever proportion each form enters into the conſtitution of a government, in the ſame proportion may both the advantages and evils, which we have attributed to that form, be expected; that is, thoſe are the uſes to be maintained and cultivated in each part of the conſtitution, and theſe are the dangers to be provided againſt in each. Thus, if ſecrecy and diſpatch be truly enumerated amongſt the ſeparate excellencies of regal government; then a mixed government, which retains monarchy in one part of its conſtitution, ſhould be careful that the other eſtates of the empire do not, by an officious and inquiſitive interference with the executive functions, which are, or ought to be, reſerved to the adminiſtration of the prince, interpoſe delays, or divulge what it is expedient to conceal. On the other hand, if profuſion, exaction, military domination and needleſs wars, be juſtly accounted natural properties of monarchy, in its ſimple unqualified form; then are theſe the objects to which, in a mixed government, the ariſtocratic and popular parts of the conſtitution ought to direct their vigilance; the dangers againſt which they ſhould raiſe and fortify their barriers: theſe are departments of ſovereignty, over which a power of inſpection and control ought to be depoſited with the people.

The ſame obſervation may be repeated of all the other advantages and inconveniences which have been aſcribed to the ſeveral ſimple forms of government; and affords a rule whereby to direct the conſtruction, improvements, and adminiſtration of mixed governments, ſubjected however to this remark, that a quality ſometimes reſults from the conjunction of two ſimple forms of government, which belongs not to the ſeparate exiſtence of either: thus corruption, which has no place in an abſolute monarchy, and little in a pure republic, is ſure to gain admiſſion into a conſtitution, which divides the ſupreme power between an executive magiſtrate and a popular council.

An *hereditary* MONARCHY is univerſally to be preferred to an *elective* monarchy. The confeſſion of every writer upon the ſubject of civil government, the experience of ages, the example of Poland, and of the papal dominions, ſeem to place this amongſt the few indubitable maxims which the ſcience of politics admits of. A crown is too ſplendid a prize to be conferred upon merit. The paſſions or intereſts of the electors exclude all conſideration of the qualities of the competitors. The ſame obſervation holds concerning the appointments to any office which is attended with a great ſhare of power or emolument. Nothing is gained by a popular choice worth the diſſenſions, tumults, and interruption of regular induſtry, with which it is inſeparably attended. Add to this, that a king, who owes his elevation to the event of a conteſt, or to any other cauſe than a fixed rule of ſucceſſion, will be apt to regard one part of his ſubjects as the aſſociates of his fortune, and the other as conquered foes. Nor ſhould it be forgotten, amongſt the advantages of an *hereditary* monarchy, that as plans of national improvement and reform are ſeldom brought to maturity by the exertions of a ſingle reign, a nation cannot attain to the degree of happineſs and proſperity to which it is capable of being carried, unleſs an uniformity of counſels, a conſiſtency of public meaſures and deſigns be continued through a ſucceſſion of ages. This benefit may be expected with greater probability, where the ſupreme power deſcends in the ſame race, and where each prince ſucceeds, in ſome ſort, to the aim, purſuits, and diſpoſition of his anceſtor, than if the crown, at every change, devolve upon a ſtranger, whoſe firſt care will commonly be to pull down what his predeceſſor had built up; and to ſubſtitute ſyſtems of adminiſtration, which muſt, in their turn, give way to the more favourite novelties of the next ſucceſſor.

ARISTOCRACIES are of two kinds: firſt, where the power of the nobility belongs to them in their collective capacity alone; that is, where, although the government reſide in an aſſembly of the order, yet the members of that aſſembly ſeparately and individually poſſeſs no authority or privilege beyond the reſt of the community:—this deſcribes the conſtitution of Venice. Secondly, where the nobles are ſeverally inveſted with great perſonal power and immunities, and where the power of the ſenate is little more than the aggregated power of the individuals who compoſe it:—this is the conſtitution of Poland. Of theſe two forms of government, the firſt is more tolerable than the laſt; for although the members of a ſenate ſhould many, or even all of them, be profligate enough to abuſe the authority of their ſtations in the proſecution of private deſigns, yet, not being all under a temptation to the ſame injuſtice, not having all the ſame end to gain, it would ſtill be difficult to obtain the conſent of a majority, to any ſpecific act of oppreſſion, which the iniquity of an individual might prompt him to propoſe; or if the will were the ſame, the power is more confined; one tyrant, whether the tyranny reſide in a ſingle perſon, or a ſenate, cannot exerciſe oppreſſion at ſo many places at the ſame time, as it may be carried on by the dominion of a numerous nobility over their reſpective vaſſals and dependants. Of all ſpecies of domination, this is the moſt odious: the freedom and ſatisfaction of private life are more conſtrained and haraſſed by it, than by the moſt vexatious law, or even by the lawleſs will of an arbitrary monarch; from whoſe knowledge, and from whoſe injuſtice, the greateſt part of his ſubjects are removed by their diſtance, or concealed by their obſcurity.

Europe exhibits more than one modern example, where the people, aggrieved by the exactions, or provoked by the enormities, of their immediate ſuperiors, have joined with the reigning prince in the overthrow of the ariſtocracy, deliberately exchanging their condition for the miſeries of deſpotiſm. About the middle of the laſt century, the commons of Denmark, weary of the oppreſſions which they had long ſuffered from the nobles, and exaſperated by ſome recent inſults, preſented themſelves at the foot of the throne, with a formal offer of their conſent to eſtabliſh unlimited dominion in the king. The revolution in Sweden, ſtill more lately brought about with the acquieſcence, not to ſay the aſſiſtance of the people; owed its ſucceſs to the ſame cauſe, namely, to the proſpect of deliverance, that it afforded, from the tyranny which their nobles exerciſed under the old conſtitution. In England the people beheld the depreſſion of the Barons, under the houſe of Tudor, with ſatisfaction, although they ſaw the crown acquiring thereby a power, which no limitations, that the conſtitution had then provided, were likely to confine. The leſſon to be drawn from ſuch events is this, that a mixed government, which admits a patrician order into its conſtitution, ought to circumſcribe the perſonal privileges of the nobility, eſpecially claims of hereditary juriſdiction and local authority, with a jealouſy equal to the ſolicitude with which it wiſhes its own preſervation. For nothing ſo alienates the minds of the people from the government under which they live, by a perpetual ſenſe of annoyance and inconveniency; or ſo prepares them for the practices of an enterpriſing prince or a factious demagogue, as the abuſe which almoſt always accompanies the exiſtence of ſeparate immunities.

Amongſt the inferior, but by no means inconſiderable advantages of a DEMOCRATIC conſtitution, or of a conſtitution in which the people partake of the power of legiſlation, the following ſhould not be neglected:

I. The direction which it gives to the education, ſtudies, and purſuits of the ſuperior orders of the community. The ſhare which this has in forming the public manners and national character is very important. In countries in which the gentry are excluded from all concern in the government, ſcarce any thing is left which leads to advancement, but the profeſſion of arms. They who do not addict themſelves to this profeſſion (and miſerable muſt that country be, which conſtantly employs the military ſervice of a great proportion of any order of its ſubjects) are commonly loſt by the mere want of object and deſtination; that is, they either fall, without reſerve, into the moſt ſottiſh habits of animal gratification, or entirely devote themſelves to the attainment of thoſe futile arts and decorations which compoſe the buſineſs and recommendations of a court: on the other hand, where the whole, or any effective portion of civil power is poſſeſſed by a popular aſſembly, more ſerious purſuits will be encouraged, purer morals and a more intellectual character will engage the public eſteem; thoſe faculties, which qualify men for deliberation and debate, and which are the fruit of ſober habits, of early and long continued application, will be rouſed and animated by the reward, which, of all others, moſt readily awakens the ambition of the human mind, political dignity and importance.

II. Popular elections procure to the common people courteſy from their ſuperiors. That contemptuous and overbearing inſolence, with which the lower orders of the community are wont to be treated by the higher, is greatly mitigated where the people have ſomething to give. The aſſiduity, with which their favour is ſought upon theſe accaſions, ſerves to generate ſettled habits of condeſcenſion and reſpect; and as human life is more embittered by affronts than injuries, whatever contributes to procure mildneſs and civility of manners towards thoſe who are moſt liable to ſuffer from a contrary behaviour, corrects, with the pride, in a great meaſure, the evil of inequality, and deſerves to be accounted amongſt the moſt generous inſtitutions of ſocial life.

III. The ſatisfactions which the people in free governments derive from the knowledge and agitation of political ſubjects; ſuch as the proceedings and debates of the ſenate; the conduct and characters of miniſters; the revolutions, intrigues, and contention of parties; and, in general, from the diſcuſſion of public meaſures, queſtions, and occurrences. Subjects of this ſort excite juſt enough of intereſt and emotion, to afford a moderate engagement to the thoughts, without riſing to any painful degree of anxiety, or ever leaving a fixed oppreſſion upon the ſpirits—and what is this, but the end and aim of all thoſe amuſements which compoſe ſo much of the buſineſs of life and of the value of riches? For my part, (and I believe it to be the caſe with moſt men, who are arrived at the middle age, and occupy the middle claſſes of life) had I all the money, which I pay in taxes to government, at liberty to lay out upon amuſement and diverſion, I know not whether I could make choice of any, in which I could find greater pleaſure, than what I receive from expecting, hearing, and relating public news; reading parliamentary debates and proceedings; canvaſſing the political arguments, projects, predictions, and intelligence, which are conveyed, by various channels, to every corner of the kingdom. Theſe topics, exciting univerſal curioſity, and being ſuch as almoſt every man is ready to form, and prepared to deliver his opinion about, greatly promote, and, I think, improve converſation. They render it more rational and more innocent. They ſupply a ſubſtitute for drinking, gaming, ſcandal, and obſcenity. Now, the ſecrecy, the jealouſy, the ſolitude and precipitation of deſpotic governments exclude all this. But the loſs, you ſay, is trifling. I know that it is poſſible to render even the mention of it ridiculous, by repreſenting it as the idle employment of the moſt inſignificant part of the nation, the folly of village-ſtateſmen, and coffee-houſe politicians: but I allow nothing to be a trifle, which miniſters to the harmleſs gratification of multitudes; nor any order of men to be inſignificant, whoſe number bears a reſpectable proportion to the ſum of the whole community.

We have been accuſtomed to an opinion, that a REPUBLICAN form of government ſuits only with the affairs of a ſmall ſtate: which opinion is founded in the conſideration, that unleſs the people, in every diſtrict of the empire, be admitted to a ſhare in the national repreſentation, the government is not, as to *them*, a republic: that elections, where the conſtituents are numerous, and diſperſed through a wide extent of country, are conducted with difficulty, or rather, indeed, managed by the intrigues, and combination of a few who are ſituated near the place of election, each voter conſidering his ſingle ſuffrage as too minute a portion of the general intereſt to deſerve his care or attendance, much leſs to be worth any oppoſition to influence and application; that whilſt we contract the repreſentation within a compaſs ſmall enough to admit of orderly debate, the intereſt of the conſtituent becomes too ſmall, of the repreſentative too great. It is difficult alſo to maintain any connexion between them. He who repreſents two hundred thouſands, is neceſſarily a ſtranger to the greateſt part of thoſe who elect him; and when his intereſt amongſt them ceaſes to depend upon an acquaintance with their perſons and character, or a care or knowledge of their affairs; when ſuch a repreſentative finds the treaſures and honours of a great empire at the diſpoſal of a few, and himſelf one of the few, there is little reaſon to hope that he will not prefer to his public duty, thoſe temptations of perſonal aggrandizement which his ſituation offers, and which the price of his vote will always purchaſe. All appeal to the people is precluded by the impoſſibility of collecting a ſufficient proportion of their force and numbers. The factions, and the unanimity of the ſenate, are equally dangerous. Add to theſe conſiderations, that in a democratic conſtitution the mechaniſm is too complicated, and the motions too ſlow for the operations of a great empire; whoſe defence and government require execution and diſpatch, in proportion to the magnitude, extent, and variety of its concerns. There is weight, no doubt, in theſe reaſons; but much of the objection ſeems to be done away by the contrivance of a *federal* republic, which, diſtributing the country into diſtricts of a commodious extent, and leaving to each diſtrict its internal legiſlation, reſerves to a convention of the ſtates, the adjuſtment of their relative claims; the levying, direction and government of the common force of the confederacy; the requiſition of ſubſidies for the ſupport of this force; the making of peace and war; the entering into treaties; the regulation of foreign commerce; the equalization of duties upon imports, ſo as to prevent the defrauding of the revenue of one province by ſmuggling articles of taxation from the borders of another; and likewiſe ſo as to guard againſt undue partialities in the encouragement of trade. To what limits ſuch a republic might, without inconveniency, enlarge its dominions, by aſſuming neighbouring provinces into the confederation; or how far it is capable of uniting the liberty of a ſmall commonwealth, with the ſafety of a powerful empire; or whether, amongſt co-ordinate powers, diſſenſions and jealouſies would not be likely to ariſe, which, for want of a common ſuperior, might proceed to fatal extremities, are queſtions, upon which the records of mankind do not authorize us to decide with tolerable certainty. The experiment is about to be tried in America upon a large ſcale.

Chapter VII.

OF THE BRITISH CONSTITUTION.

BY the CONSTITUTION of a country, is meant, ſo much of its law as relates to the deſignation and form of the legiſlature; the rights and functions of the ſeveral parts of the legiſlative body; the conſtruction, office, and juriſdiction of courts of juſtice. The conſtitution is one principal diviſion, ſection, or title of the code of public laws; diſtinguiſhed from the reſt only by the ſuperior importance of the ſubject of which it treats. Therefore the terms, *conſtitutional* and *unconſtitutional*, mean legal and illegal. The diſtinction and the ideas, which theſe terms denote, are founded in the ſame authority with the law of the land upon any other ſubject; and to be aſcertained by the ſame inquiries. In England the ſyſtem of public juriſprudence is made up of acts of parliament, of deciſions of courts of law, and of immemorial uſages: conſequently, theſe are the principles of which the Engliſh conſtitution itſelf conſiſts; the ſources from which all our knowledge of its nature and limitations is to be deduced, and the authorities to which all appeal ought to be made, and by which every conſtitutional doubt and queſtion can alone be decided. This plain and intelligible definition is the more neceſſary to be preſerved in our thoughts, as ſome writers upon the ſubject abſurdly confound what is conſtitutional with what is expedient; pronouncing forthwith a meaſure to be unconſtitutional, which they adjudge in any reſpect to be detrimental or dangerous; whilſt others again aſcribe a kind of tranſcendent authority, or myſterious ſanctity, to the conſtitution, as if it were founded in ſome higher original than that which gives force and obligation to the ordinary laws and ſtatutes of the realm, or were inviolable on any other account than its intrinſic utility. An act of parliament, in England, can never be unconſtitutional, in the ſtrict and proper acceptation of the term; in a lower ſenſe it may, viz. when it militates with the ſpirit, contradicts the analogy, or defeats the proviſion of other laws, made to regulate the form of government. Even that flagitious abuſe of their truſt, by which a parliament of Henry VIII. conferred upon the king's proclamation the authority of law, was unconſtitutional only in this latter ſenſe.

Moſt of thoſe who treat of the Britiſh conſtitution, conſider it as a ſcheme of government formerly planned and contrived by our anceſtors, in ſome certain era of our national hiſtory, and as ſet up in purſuance of ſuch regular plan and deſign. Something of this ſort is ſecretly ſuppoſed, or referred to, in the expreſſions of thoſe who ſpeak of the "principle of the conſtitution," of bringing back the conſtitution to its "firſt principles," of reſtoring it to its "original purity," or "primitive model." Now this appears to me an erroneous conception of the ſubject. No ſuch plan was ever formed, conſequently no ſuch firſt principles, original model, or ſtandard exiſt. I mean there never was a date, or point of time in our hiſtory, when the government of England was to be ſet up anew, and when it was referred to any ſingle perſon, or aſſembly, or committee, to frame a charter for the future government of the country; or when a conſtitution, ſo prepared and digeſted, was by common conſent received and eſtabliſhed. In the time of the civil wars, or rather between the death of Charles the Firſt and the reſtoration of his ſon, many ſuch projects were publiſhed, but none were carried into execution. The great charter and the bill of rights, were wiſe and ſtrenuous efforts to obtain ſecurity againſt certain abuſes of regal power, by which the ſubject had been formerly aggrieved; but theſe were either of them much too partial modifications of the conſtitution to give it a new original. The conſtitution of England, like that of moſt countries in Europe, hath grown out of occaſion and emergency; from the fluctuating policy of different ages; from the contentions, ſucceſſes, intereſts, and opportunities of different orders and parties of men in the community. It reſembles one of thoſe old manſions, which, inſtead of being built all at once, after a regular plan, and according to the rules of architecture at preſent eſtabliſhed, has been reared in different ages of the art, has been altered from time to time, and has been continually receiving additions and repairs ſuited to the taſte, fortune, or conveniency of its ſucceſſive proprietors. In ſuch a building, we look in vain for the elegance and proportion, for the juſt order and correſpondence of parts, which we expect in a modern edifice; and which external ſymmetry, after all, contributes much more perhaps to the amuſement of the beholder, than the accommodation of the inhabitant.

In the Britiſh, and poſſibly in all other conſtitutions, there exiſts a wide difference between the actual ſtate of the government and the theory. The one reſults from the other; but ſtill they are different. When we contemplate the *theory* of the Britiſh government, we ſee the king inveſted with the moſt abſolute perſonal impunity; with a power of rejecting laws, which have been reſolved upon by both houſes of parliament; of conferring by his charter, upon any ſet or ſucceſſion of men he pleaſes, the privilege of ſending repreſentatives into one houſe of parliament, as by his immediate appointment he can place whom he will in the other. What is this, a foreigner might aſk, but a more circuitous deſpotiſm? Yet, when we turn our attention from the legal extent to the actual exerciſe of royal authority in England, we ſee theſe formidable prerogatives dwindled into mere ceremonies; and in their ſtead, a ſure and commanding influence, of which the conſtitution, it ſeems, is totally ignorant, growing out of that enormous patronage, which the increaſed territory and opulence of the empire have placed in the diſpoſal of the executive magiſtrate.

Upon queſtions of reform, the habit of reflection to be encouraged, is a ſober compariſon of the conſtitution under which we live, not with models of ſpeculative perfection, but with the actual chance of obtaining a better. This turn of thought will generate a political diſpoſition, equally removed from that puerile admiration of preſent eſtabliſhments, which ſees no fault, and can endure no change, and that diſtempered ſenſibility, which is alive only to perceptions of inconveniency, and is too impatient to be delivered from the uneaſineſs which it feels, to compute either the peril, or expenſe of the remedy. Political innovations commonly produce many effects beſides thoſe that are intended. The direct conſequence is often the leaſt important. Incidental, remote, and unthought of evils or advantages frequently exceed the good that is deſigned, or the miſchief that is foreſeen. It is from the ſilent and unobſerved operation; from the obſcure progreſs of cauſes, ſet at work for different purpoſes, that the greateſt revolutions take their riſe. When Elizabeth, and her immediate ſucceſſor, applied themſelves to the encouragement and regulation of trade, by many wiſe laws, they knew not, that, together with wealth and induſtry, they were diffuſing a conſciouſneſs of ſtrength and independency, which would not long endure, under the forms of a mixed government, the dominion of arbitrary princes. When it was debated whether the mutiny act, the law by which the army is governed and maintained, ſhould be temporary or perpetual, little elſe, probably, ocurred to the advocates of an annual bill, than the expediency of retaining a control over the moſt dangerous prerogative of the crown—the direction and command of a ſtanding army: whereas, in its effect, this ſingle reſervation has altered the whole frame and quality of the Britiſh conſtitution. For ſince, in conſequence of the military ſyſtem, which prevails in neighbouring and rival nations, as well as on account of the internal exigencies of government, a ſtanding army has become eſſential to the ſafety and adminiſtration of the empire; it enables parliament, by diſcontinuing this neceſſary proviſion, ſo to enforce its reſolutions upon any other ſubject, as to render the king's diſſent to a law, which has received the approbation of both houſes, too dangerous an experiment any longer to be adviſed. A conteſt between the king and parliament, cannot now be perſevered in, without a diſſolution of the government. Laſtly, when the conſtitution conferred upon the crown the nomination to all employments in the public ſervice, the authors of this arrangement were led to it, by the obvious propriety of leaving to a maſter the choice of his ſervants; and by the manifeſt inconveniency of engaging the national council, upon every vacancy, in thoſe perſonal conteſts which attend elections to places of honour and emolument. Our anceſtors did not obſerve that this diſpoſition added an influence to the regal office, which, as the number and value of public employments increaſed, would ſuperſede in a great meaſure the forms, and change the character of the ancient conſtitution. They knew not, what the experience and reflection of modern ages has diſcovered, that patronage univerſally is power; that he who poſſeſſes in a ſufficient degree the means of gratifying the deſires of mankind after wealth and diſtinction, by whatever checks and forms his authority may be limited or diſguiſed, will direct the management of public affairs. Whatever be the mechaniſm of the political engine, he will guide the motion. Theſe inſtances are adduced in order to illuſtrate the propoſition which we laid down, that, in politics, the moſt important and permanent effects have, for the moſt part, been incidental, and unforeſeen: and this propoſition we inculcate, for the ſake of the caution which it teaches, that changes ought not to be adventured upon without a *comprehenſive* diſcernment of the conſequences,—without a knowledge, as well of the remote tendency, as of the immediate deſign. The courage of a ſtateſman ſhould reſemble that of a commander, who, however regardleſs of perſonal danger, never forgets, that with his own he commits the lives and fortunes of a multitude; and who does not conſider it as any proof of zeal or valour, to ſtake the ſafety of *other* men upon the ſucceſs of a perilous or deſperate enterprize.

There is one end of civil government peculiar to a good conſtitution, namely, the happineſs of its ſubjects; there is another end eſſential to a good government, but common to it with many bad ones,—its own preſervation. Obſerving that the beſt form of government would be defective, which did not provide for its own permanency, in our political reaſonings we conſider all ſuch proviſions as expedient; and are content to accept as a ſufficient ground for a meaſure, or law, that it is neceſſary or conducive to the preſervation of the conſtitution. Yet, in truth, ſuch proviſions are abſolutely expedient, and ſuch an excuſe final, only whilſt the conſtitution is worth preſerving; that is, until it can be exchanged for a better. I premiſe this diſtinction, becauſe many things in the Engliſh, as in every conſtitution, are to be vindicated and accounted for, ſolely from their tendency to maintain the government in its preſent ſtate, and the ſeveral parts of it in poſſeſſion of the powers which the conſtitution has aſſigned to them; and becauſe I would wiſh it to be remarked, that ſuch a conſideration is always ſubordinate to another —the value and uſefulneſs of the conſtitution itſelf.

The government of England, which has been ſometimes called a mixed government, ſometimes a limited monarchy, is formed by a combination of the three regular ſpecies of government; the monarchy, reſiding in the King; the ariſtocracy, in the Houſe of Lords; and the republic being repreſented by the Houſe of Commons. The perfection intended by ſuch a ſcheme of government is, to unite the advantages of the ſeveral ſimple forms, and to exclude the inconveniences. To what degree this purpoſe is attained or attainable in the Britiſh conſtitution; wherein it is loſt ſight of or neglected; and by what means it may in any part be promoted with better ſucceſs, the reader will be enabled to judge, by a ſeparate recollection of theſe advantages and inconveniences, as enumerated in the preceding chapter, and a diſtinct application of each to the political condition of this country. We will preſent our remarks upon the ſubject in a brief account of the expedients by which the Britiſh conſtitution provides,

1ſt, For the intereſt of its ſubjects.

2dly, For its own preſervation.

The contrivances for the firſt of theſe purpoſes are the following:

In order to promote the eſtabliſhment of ſalutary public laws, every citizen of the ſtate is capable of becoming a member of the ſenate; and every ſenator poſſeſſes the right of propounding to the deliberation of the legiſlature whatever law he pleaſes.

Every diſtrict of the empire enjoys the privilege of chooſing repreſentatives, informed of the intereſts, and circumſtances and deſires of their conſtituents, and entitled by their ſituation to communicate that information to the national council. The meaneſt ſubject has ſome one whom he can call upon to bring forward his complaints and requeſts to public attention.

By annexing the right of voting for members of the Houſe of Commons to different qualifications in different places, each order and profeſſion of men in the community become virtually repreſented; that is, men of all orders and profeſſions, ſtateſmen, courtiers, country gentlemen, lawyers, merchants, manufacturers, ſoldiers, ſailors, intereſted in the proſperity, and experienced in the occupation of their reſpective profeſſions, obtain ſeats in parliament.

The elections, at the ſame time, are ſo connected with the influence of landed property, as to afford a certainty that a conſiderable number of men of great eſtates will be returned to parliament; and are alſo ſo modified, that men the moſt eminent and ſucceſsful in their reſpective profeſſions, are the moſt likely, by their riches, or the weight of their ſtations, to prevail in theſe competitions.

The number, fortune, and quality of the members; the variety of intereſts and characters amongſt them; above all, the temporary duration of their power, and the change of men which every new election produces, are ſo many ſecurities to the public, as well againſt the ſubjection of their judgments to any external dictation, as againſt the formation of a junto in their own body, ſufficiently powerful to govern their deciſions.

The repreſentatives are ſo intermixed with the conſtituents, and the conſtituents with the reſt of the people, that they cannot, without a partiality too flagrant to be endured, impoſe any burthen upon the ſubject, in which they do not ſhare themſelves; nor ſcarcely can they adopt an advantageous regulation in which their own intereſts will not participate of the advantage.

The proceedings and debates of parliament, and the parliamentary conduct of each repreſentative are known by the people at large.

The repreſentative is ſo far dependent upon the conſtituent, and political importance upon public favour, that a member of parliament cannot more effectually recommend himſelf to eminence and advancement in the ſtate, than by contriving and patronizing laws of public utility.

When intelligence of the condition, wants, and occaſions of the people, is thus collected from every quarter, when ſuch a variety of invention, and ſo many underſtandings are ſet at work upon the ſubject, it may be preſumed, that the moſt eligible expedient, remedy or improvement, will occur to ſome one or other; and when a wiſe counſel, or beneficial regulation is once ſuggeſted, it may be expected, from the diſpoſition of an aſſembly ſo conſtituted as the Britiſh houſe of commons is, that it cannot fail of receiving the approbation of a majority.

To prevent thoſe deſtructive contentions for the ſupreme power which are ſure to take place, where the members of the ſtate do not live under an acknowledged head, and a known rule of ſucceſſion; to preſerve the people in tranquillity at home, by a ſpeedy and vigorous execution of the laws; to protect their intereſt abroad, by ſtrength and energy in military operations, by thoſe advantages of deciſion, ſecrecy and diſpatch, which belong to the reſolutions of monarchical councils:—for theſe purpoſes, the conſtitution has committed the executive government to the adminiſtration and limited authority of an hereditary king.

In the defence of the empire; in the maintenance of its power, dignity, and privileges, with foreign nations; in the advancement of its trade by treaties and conventions; and in the providing for the general adminiſtration of municipal juſtice, by a proper choice and appointment of magiſtrates, the inclination of the king and of the people uſually coincides: in this part, therefore, of the regal office, the conſtitution intruſts the prerogative with ample powers.

The dangers principally to be apprehended from regal government, relate to the two articles, *taxation* and *puniſhment*. In every form of government, from which the people are excluded, it is the intereſt of the governors to get as much, and of the governed to give as little as they can: the power alſo of puniſhment, in the hands of an arbitrary prince, oftentimes becomes an engine of extortion, jealouſy, and revenge. Wiſely, therefore, hath the Britiſh conſtitution guarded the ſafety of the people, in theſe two points, by the moſt ſtudious precautions.

Upon that of *taxation*, every law, which, by the remoteſt conſtruction, may be deemed to levy money upon the property of the ſubject, muſt originate, that is, muſt firſt be propoſed and aſſented to, in the houſe of commons: by which regulation, accompanying the weight which that aſſembly poſſeſſes in all its functions, the levying of taxes is almoſt excluſively reſerved to the popular part of the conſtitution, who, it is preſumed, will not tax themſelves, nor their fellow ſubjects, without being firſt convinced of the neceſſity of the aids which they grant.

The application alſo of the public ſupplies, is watched with the ſame circumſpection, as the aſſeſſment. Many taxes are annual; the produce of others is mortgaged, or appropriated to ſpecific ſervices; the expenditure of all of them, is accounted for in the houſe of commons; as computations of the charge of the purpoſe, for which they are wanted, are previouſly ſubmitted to the ſame tribunal.

In the infliction of *puniſhment*, the power of the crown, and of the magiſtrate appointed by the crown, is confined by the moſt preciſe limitations: the guilt of the offender muſt be pronounced by twelve men of his own order, indifferently choſen out of the county where the offence was committed: the puniſhment, or the limits to which the puniſhment may be extended, are aſcertained and affixed to the crime, by laws which knew not the perſon of the criminal.

And whereas arbitrary or clandeſtine confinement is the injury moſt to be dreaded from the ſtrong hand of the executive government, becauſe it deprives the priſoner at once of protection and defence, and delivers him into the power, and to the malicious or intereſted deſigns of his enemies; the conſtitution has provided againſt this danger with double ſolicitude. The ancient writ of habeas corpus, the habeas corpus act of Charles the Second, and the practice and determinations of our ſovereign courts of juſtice, founded upon theſe laws, afford a complete remedy for every conceivable caſe of illegal impriſonment.*

Treaſon being that charge, under colour of which the deſtruction of an obnoxious individual is often ſought; and government being at all times more immediately a party in the proſecution; the law, beſide the general care with which it watches over the ſafety of the accuſed, in this caſe, ſenſible of the unequal conteſt in which the ſubject is engaged, has aſſiſted his defence with extraordinary indulgencies. By two ſtatutes, enacted ſince the revolution, every perſon indicted for high treaſon ſhall have a copy of his indictment, a liſt of the witneſſes to be produced, and of the jury impannelled, delivered to him ten days before the trial; he is alſo permitted to make his defence by counſel—privileges which are not allowed to the priſoner, in a trial for any other crime: and what is of more importance to the party than all the reſt, the teſtimony of two witneſſes, at the leaſt, is required to convict a perſon of treaſon; whereas, one poſitive witneſs is ſufficient in almoſt every other ſpecies of accuſation.

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* Upon complaint in writing by, or on behalf of any perſon in confinement, to any of the four courts of Weſtminſter Hall, in term time, or to the Lord Chancellor, or one of the Judges, in the vacation; and upon a probable reaſon being ſuggeſted to queſtion the legality of the detention, a writ is iſſued, to the perſon in whoſe cuſtody the complainant is alleged to be, commanding him within a certain limited and ſhort time to produce the body of the priſoner, and the authority under which he is detained. Upon the return of the writ, ſtrict and inſtantaneous obedience to which is enforced by very ſevere penalties, if no lawful cauſe of impriſonment appear, the court or judge, before whom the priſoner is brought, is authorized and bound to diſcharge him; even though he may have been committed by a ſecretary, or other high officer of ſtate, by the privy council, or by the king in perſon: ſo that no ſubject of this realm can be held in confinement, by any power, or under any pretence whatever, provided he can find means to convey his complaint to one of the four courts of Weſtminſter Hall, or, during their receſs, to any of the Judges of the ſame, unleſs all theſe ſeveral tribunals agree in determining his impriſonment to be legal. He may make application to them, in ſucceſſion; and if one out of the number be found, who thinks the priſoner entitled to his liberty, that one poſſeſſes authority to reſtore it to him.

We proceed, in the ſecond place, to inquire in what manner the conſtitution has provided for its own preſervation; that is, in what manner each part of the legiſlature is ſecured in the exerciſe of the powers aſſigned to it, from the encroachment of the other parts. The ſecurity is ſometimes called the *balance of the conſtitution;* and the political equilibrium, which this phraſe denotes, conſiſts in two contrivances,—a balance of power, and a balance of intereſt. By a balance of power is meant, that there is no power poſſeſſed by one part of the legiſlature, the abuſe, or exceſs of which is not checked by ſome antagoniſt power, reſiding in another part. Thus the power of the two houſes of parliament to frame laws is checked by the king's negative; that if laws ſubverſive of regal government ſhould obtain the conſent of parliament, the reigning prince, by interpoſing his prerogative, may ſave the neceſſary rights and authority of his ſtation. On the other hand, the arbitrary application of this negative is checked by the privilege which parliament poſſeſſes, of refuſing ſupplies of money to the exigencies of the king's adminiſtration. The conſtitutional maxim, "that the king can do no wrong," is balanced by another maxim, not leſs conſtitutional, "that the illegal commands of the king do not juſtify thoſe who aſſiſt, or concur, in carrying them into execution;" and by a ſecond rule, ſubſidiary to this, "that the acts of the crown acquire not a legal force, until authenticated by the ſubſcription of ſome of its great officers." The wiſdom of this contrivance is worthy of obſervation. As the king could not be puniſhed, without a civil war, the conſtitution exempts his perſon from trial or account; but leſt this impunity ſhould encourage a licentious exerciſe of dominion, various obſtacles are oppoſed to the private will of the ſovereign, when directed to illegal objects. The pleaſure of the crown muſt be announced with certain ſolemnities, and atteſted by certain officers of ſtate. In ſome caſes, the royal order muſt be ſignified by a ſecretary of ſtate; in others it muſt paſs under the privy ſeal, and in many, under the great ſeal. And when the king's command is regularly publiſhed, no miſchief can be achieved by it, without the miniſtry and compliance of thoſe to whom it is directed. Now, all who either concur in an illegal order, by authenticating its publication with their ſeal or ſubſcription, or who in any manner aſſiſt in carrying it into execution, ſubject themſelves to proſecution and puniſhment, for the part they have taken; and are not permitted to plead or produce the command of the king, in juſtification of their obedience.* But farther; the power of the crown to direct the military force of the kingdom, is balanced by the annual neceſſity of reſorting to parliament for the maintenance and government of that force. The power of the king to declare war, is checked by the privilege of the houſe of commons to grant or withhold the ſupplies by which the war muſt be carried on. The king's choice of his miniſters is controlled by the obligation he is under of appointing thoſe men to offices in the ſtate, who are found capable of managing the affairs of his government with the two houſes of parliament. Which conſideration impoſes ſuch a neceſſity upon the crown, as hath in a great meaſure ſubdued the influence of favouritiſm; inſomuch, that it is become no uncommon ſpectacle in this country, to ſee men promoted by the king to the higheſt offices, and richeſt preferments, which he has in his power to beſtow, who have been diſtinguiſhed by their oppoſition to his perſonal inclinations.

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* Amongſt the checks, which parliament holds over the adminiſtration of public affairs, I forbear to mention the practice of addreſſing the king, to know by whoſe advice he reſolved upon a particular meaſure, and of puniſhing the authors of that advice, for the counſel they had given. Not becauſe I think this method either unconſtitutional or improper, but for this reaſon, that it does not ſo much ſubject the king to the control of parliament, as it ſuppoſes him to be already in ſubjection. For if the king were ſo far out of the reach of the reſentment of the houſe of commons, as to be able, with ſafety, to refuſe the information requeſted, or to take upon himſelf the reſponſibility inquired after, there muſt be an end of all proceedings founded in this mode of application.

By the *balance of intereſt*, which accompanies and gives efficacy to the *balance of power*, is meant this, that the reſpective intereſts of the three eſtates of the empire are ſo diſpoſed and adjuſted, that whichever of the three ſhall attempt any encroachment, the other two will unite in reſiſting it. If the king ſhould endeavour to extend his authority, by contracting the power and privileges of the commons, the houſe of lords would ſee their own dignity endangered by every advance which the crown made to independency upon the reſolutions of parliament. The admiſſion of arbitrary power is no leſs formidable to the grandeur of the ariſtocracy, than it is fatal to the liberty of the republic; that is, it would reduce the nobility from the hereditary ſhare they poſſeſs, in the national councils, in which their real greatneſs conſiſts, to the being made a part of the empty pageantry of a deſpotic court. On the other hand, if the houſe of commons ſhould intrench upon the diſtinct province, or uſurp the eſtabliſhed prerogative of the crown, the houſe of lords would receive an inſtant alarm from every new ſtretch of popular power. In every conteſt in which the king may be engaged with the repreſentative body, in defence of his eſtabliſhed ſhare of authority, he will find a ſure ally in the collective power of the nobility. An attachment to the monarchy, from which they derive their own diſtinction; the allurements of a court, in the habits and with the ſentiments of which they have been brought up; their hatred of equality, and of all levelling pretenſions, which may ultimately affect the privileges, or even the exiſtence of their order; in ſhort, every principle and every prejudice which are wont to actuate human conduct, will determine their choice, to the ſide and ſupport of the crown. Laſtly, if the nobles themſelves ſhould attempt to revive the ſuperiorities, which their anceſtors exerciſed under the feudal conſtitution, the king and the people would alike remember, how the one had been inſulted, and the other enſlaved, by that barbarous tyranny. They would forget the natural oppoſition of their views and inclinations, when they ſaw themſelves threatened with the return of a domination, which was odious and intolerable to both.

The reader will have obſerved, that in deſcribing the Britiſh conſtitution, little notice notice has been taken of the houſe of lords. The proper uſe and deſign of this part of the conſtitution, are the following: Firſt, to enable the king, by his right of beſtowing the peerage, to reward the ſervants of the public, in a manner moſt grateful to them, and at a ſmall expenſe to the nation; ſecondly, to fortify the power and to ſecure the ſtability of regal government, by an order of men naturally allied to its intereſts; and, thirdly, to anſwer a purpoſe, which, though of ſuperior importance to the other two, does not occur ſo readily to our obſervation; namely, to ſtem the progreſs of popular fury. Large bodies of men are ſubject to ſudden frenzies. Opinions are ſometimes circulated amongſt a multitude without proof or examination, acquiring confidence and reputation merely by being repeated from one to another; and paſſions founded upon theſe opinions, diffuſing themſelves with a rapidity which can neither be accounted for nor reſiſted, may agitate a country with the moſt violent commotions. Now the only way to ſtop the fermentation, is to divide the maſs; that is, to erect different orders in the community, with ſeparate prejudices and intereſts. And this may occaſionally become the uſe of an hereditary nobility, inveſted with a ſhare of legiſlation. Averſe to thoſe prejudices which actuate the minds of the vulgar; accuſtomed to condemn the clamour of the populace; diſdaining to receive laws and opinions from their inferiors in rank, they will oppoſe reſolutions, which are founded in the folly and violence of the lower part of the community. Was the voice of the people always dictated by reflection; did every man, or even one man in an hundred think for himſelf, or actually conſider the meaſure he was about to approve or cenſure; or even were the common people tolerably ſtedfaſt in the judgment which they formed, I ſhould hold the interference of a ſuperior order, not only ſuperfluous, but wrong: for, when every thing is allowed to difference of rank and education, which the actual ſtate of theſe advantages deſerves, that, after all, is moſt likely to be right and expedient, which appears to be ſo to the ſeparate judgment and deciſion of a great majority of the nation; at leaſt, that, in general, is right *for them*, which is agreeable to their fixed opinions and deſires. But when we obſerve what is urged as the public opinion, to be, in truth, the opinion only or perhaps the feigned profeſſions of a few crafty leaders; that the numbers who join in the cry, ſerve only to ſwell and multiply the ſound, without any acceſſion of judgment, or exerciſe of underſtanding; and that oftentimes the wiſeſt counſels have been thus overborne by tumult and uproar,—we may conceive occaſions to ariſe, in which the commonwealth may be ſaved by the reluctance of the nobility to adopt the caprices, or to yield to the vehemence of the common people. In expecting this advantage from an order of nobles, we do not ſuppoſe the nobility to be more unprejudiced than others; we only ſuppoſe that their prejudices will be different from, and may occaſionally counteract thoſe of others.

If the perſonal privileges of the peerage, which are uſually ſo many injuries to the reſt of the community, be reſtrained, I ſee little inconveniency in the increaſe of its number; for it is only dividing the ſame quantity of power amongſt more hands, which is rather favourable to public freedom than otherwiſe.

The admiſſion of a ſmall number of eccleſiaſtics into the houſe of lords, is but an equitable compenſation to the clergy for the excluſion of their order from the houſe of commons. They are a ſet of men conſiderable by their number and property, as well as by their influence, and the duties of their ſtation; yet, whilſt every other profeſſion has thoſe amongſt the national repreſentatives, who, being converſant in the ſame occupation, are able to ſtate, and naturally diſpoſed to ſupport, the rights and intereſts of the claſs and calling to which they belong, the clergy alone are deprived of this advantage. Which hardſhip is made up to them by introducing the prelacy into parliament; and if biſhops, from gratitude or expectation, be more obſequious to the will of the crown, than thoſe who poſſeſs great temporal inheritances, they are properly inſerted into that part of the conſtitution, from which much or frequent reſiſtance to the meaſures of government is not expected.

I acknowledge, that I perceive no ſufficient reaſon for exempting the perſons of members of either houſe of parliament from arreſt for debt. The counſels or ſuffrage of a ſingle ſenator, eſpecially of one who, in the management of his own affairs, may juſtly be ſuſpected of a want of prudence or honeſty, can ſeldom be ſo neceſſary to thoſe of the public, as to juſtify a departure from that wholeſome policy, by which the laws of a commercial ſtate puniſh and ſtigmatize inſolvency. But whatever reaſon may be pleaded for their *perſonal* immunity, when this privilege of parliament is extended to domeſtics and retainers, or when it is permitted to impede or delay the courſe of judicial proceedings, it becomes an abſurd ſacrifice of equal juſtice to imaginary dignity.

There is nothing, in the Britiſh conſtitution, ſo remarkable, as the irregularity of the popular repreſentation. The houſe of commons conſiſts of five hundred and forty-eight members, of whom, two hundred are elected by ſeven thouſand conſtituents: ſo that a majority of theſe ſeven thouſand, without any reaſonable title to ſuperior weight or influence in the ſtate, may, under certain circumſtances, decide a queſtion againſt the opinion of as many millions. Or, to place the ſame object in another point of view; if my eſtate be ſituated in one county of the kingdom, I poſſeſs the ten thouſandth part of a ſingle repreſentative; if in another, the thouſandth; if in a particular diſtrict, I may be one in twenty who chooſe two repreſentatives; if in a ſtill more favoured ſpot, I may enjoy the right of appointing two myſelf. If I have been born, or dwelt, or have ſerved an apprenticeſhip in one town, I am repreſented in the national aſſembly by two deputies, in the choice of whom I exerciſe an actual and ſenſible ſhare of power; if accident has thrown my birth, or habitation, or ſervice into another town, I have no repreſentative at all, nor more power or concern in the election of thoſe who make the laws by which I am governed, than if I was a ſubject of the Grand Seignior—and this partiality ſubſiſts without any pretence whatever of merit or of propriety, to juſtify the preference of one place to another. Or, thirdly, to deſcribe the ſtate of national repreſentation as it exiſts in reality, it may be affirmed, I believe, with truth, that about one half of the houſe of commons obtain their ſeats in that aſſembly by the election of the people, the other half by purchaſe, or by the nomination of ſingle proprietors of great eſtates.

This is a flagrant incongruity in the conſtitution; but it is one of thoſe objections which ſtrike moſt forcibly at firſt ſight. The effect of all reaſoning upon the ſubject is to diminiſh the firſt impreſſion; on which account it deſerves the more attentive examination, that we may be aſſured, before we adventure upon a reformation, that the magnitude of the evil juſtifies the danger of the experiment. In the few remarks that follow, we would be underſtood, in the firſt place, to decline all conference with thoſe who wiſh to alter the form of government of theſe kingdoms. The reformers with whom we have to do, are they, who, whilſt they change this part of the ſyſtem, would retain the reſt. If any Engliſhman expects more happineſs to his country under a republic, he may very conſiſtently recommend a new modelling of elections to parliament; becauſe, if the king and houſe of lords were laid aſide, the preſent diſproportionate repreſentation would produce nothing but a confuſed and ill-digeſted oligarchy. In like manner we wave a controverſy with thoſe writers who inſiſt upon repreſentation as a *natural* right:* we conſider it ſo far only as a right at all, as it conduces to public utility; that is, as it contributes to the eſtabliſhment of good laws, or, as it ſecures to the people the juſt adminiſtration of theſe laws. Theſe effects depend upon the diſpoſition and abilities of the national counſellors. Wherefore, if men, the moſt likely by their qualifications to know and to promote the public intereſt, be actually returned to parliament, it ſignifies little who return them. If the propereſt perſons be elected, what matters it by whom they are elected? At leaſt, no prudent ſtateſman would ſubvert long eſtabliſhed or even ſettled rules of repreſentation, without a proſpect of procuring wiſer or better repreſentatives.

This then being well obſerved, let us, before we ſeek to obtain any thing more, conſider duly what we already have. We *have* a houſe of commons, compoſed of five hundred and forty-eight members, in which number are found the moſt conſiderable landholders and merchants of the kingdom; the heads of the army, the navy, and the law; the occupiers of great offices in the ſtate; together with many private individuals, eminent by their knowledge, eloquence, or activity.

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* If this right be *natural*, no doubt it muſt be equal, and the right, we may add, of one ſex, as well as of the other. Whereas every plan of repreſentation, that we have heard of, begins, by excluding the votes of women: thus cutting off, at a ſingle ſtroke, one half of the public from a right which is aſſerted to be inherent in all; a right too, as ſome repreſent it, not only univerſal, but unalienable, and indefeaſible, and impreſcriptible.

Now, if the country be not ſafe in ſuch hands, in whoſe may it confide its intereſts? If ſuch a number of ſuch men be liable to the influence of corrupt motives, what aſſembly of men will be ſecure from the ſame danger? Does any new ſcheme of repreſentation promiſe to collect together more wiſdom, or to produce firmer integrity? In this view of the ſubject, and attending not to ideas of order and proportion, (of which many minds are much enamoured) but to effects alone, we may diſcover juſt excuſes for thoſe parts of the preſent repreſentation, which appear to a haſty obſerver moſt exceptionable and abſurd. It ſhould be remembered as a maxim extremely applicable to this ſubject, that no order or aſſembly of men whatever can long maintain their place and authority in a mixed government, of which the members do not individually poſſeſs a reſpectable ſhare of perſonal importance. Now, whatever may be the defects of the preſent arrangement, it infallibly ſecures a great weight of property to the houſe of commons, by rendering many ſeats in that houſe acceſſible to men of large fortunes, and to ſuch men alone. By which means thoſe characters are engaged in the defence of the ſeparate rights and intereſts of this branch of the legiſlature, that are beſt able to ſupport its claims. The conſtitution of moſt of the ſmall boroughs, eſpecially the burgage tenure, contributes, though undeſignedly, to the ſame effect; for the appointment of the repreſentatives we find commonly annexed to certain great inheritances. Elections purely popular are in this reſpect uncertain: in times of tranquillity, the natural aſcendency of wealth will prevail; but when the minds of men are inflamed by political diſſenſions, this influence often yields to more impetuous motives.—The variety of tenures and qualifications, upon which the right of voting is founded, appears to me a recommendation of the mode which now ſubſiſts, as it tends to introduce into parliament a correſponding mixture of characters and profeſſions. It has been long obſerved, that conſpicuous abilities are moſt frequently found with the repreſentatives of ſmall boroughs. And this is nothing more than what the laws of human conduct might teach us to expect: when ſuch boroughs are ſet to ſale, thoſe men are likely to become purchaſers, who are enabled by their talents to make the beſt of their bargain; when a ſeat is not ſold, but given by the opulent proprietor of a burgage tenure, the patron finds his own intereſt conſulted, by the reputation and abilities of the member whom he nominates. If certain of the nobility hold the appointment of ſome part of the houſe of commons, it ſerves to maintain that alliance between the two branches of the legiſlature, which no good citizen would wiſh to ſee diſſevered: it helps to keep the government of the country in the houſe of commons, in which it would not perhaps long continue to reſide, if ſo powerful and wealthy a part of the nation as the peerage compoſe, were excluded from all ſhare and intereſt in its conſtitution. If there be a few boroughs ſo circumſtanced as to lie at the diſpoſal of the crown; whilſt the number of ſuch is known and ſmall, they may be tolerated with little danger. For where would be the impropriety, or the inconveniency, if the king at once ſhould nominate a limited number of his ſervants to ſeats in parliament; or, what is the ſame thing, if ſeats in parliament were annexed to the poſſeſſion of certain of the moſt efficient and reſponſible offices in the ſtate? The preſent repreſentation, after all theſe deductions, and under the confuſion in which it confeſſedly lies, is ſtill in ſuch a degree popular; or rather the repreſentatives are ſo connected with the maſs of the community, by a ſociety of intereſts and paſſions, that the will of the people, when it is determined, permanent, and general, almoſt always at length prevails.

Upon the whole, in the ſeveral plans which have been ſuggeſted, of an equal or a reformed repreſentation, it will be difficult to diſcover any propoſal that has a tendency to throw more of the buſineſs of the nation into the houſe of commons, or to collect a ſet of men more fit to tranſact that buſineſs, or in general more intereſted in the national happineſs and proſperity. One conſequence, however, may be expected from theſe projects, namely, "leſs flexibility to the influence of the crown." And ſince the diminution of this influence is the declared, and perhaps the ſole deſign of the various ſchemes that have been produced, whether for regulating the elections, contracting the duration, or for purifying the conſtitution of parliament by the excluſion of placemen and penſioners; it is obvious to remark, that the more apt and natural, as well as the more ſafe and quiet way of attaining the ſame end, would be, by a direct reduction of the patronage of the crown, which might be effected to a certain extent without hazarding farther conſequences. Superfluous and exorbitant emoluments of office may not only be ſuppreſſed for the preſent; but proviſions of law be deviſed, which ſhould for the future reſtrain, within certain limits, the number and value of the offices in the donation of the king.

But whilſt we diſpute concerning different ſchemes of reformation, all directed to the ſame end, a previous doubt occurs in the debate, whether the end itſelf be good or ſafe—whether the influence ſo loudly complained of can be deſtroyed, or even much diminiſhed, without danger to the ſtate. Whilſt the zeal of ſome men beholds this influence with a jealouſy, which nothing but its entire abolition can appeaſe, many wiſe and virtuous politicians deem a conſiderable portion of it to be as neceſſary a part of the Britiſh conſtitution, as any other ingredient in the compoſition—to be that, indeed, which gives cohesion and ſolidity to the whole. Were the meaſures of government, ſay they, oppoſed from nothing but principle, government ought to have nothing but the rectitude of its meaſures to ſupport them; but ſince oppoſition ſprings from other motives, government muſt poſſeſs an influence to counteract theſe motives; to produce, not a bias of the paſſions, but a neutrality: it muſt have ſome weight to caſt into the ſcale to ſet the balance even. It is the nature of power always to preſs upon the boundaries which confine it. Licentiouſneſs, faction, envy, impatience of control or inferiority; the ſecret pleaſure of mortifying the great, or the hope of diſpoſſeſſing them ; a conſtant willingneſs to queſtion and thwart whatever is dictated or even propoſed by another ; a diſpoſition common to all bodies of men to extend the claims and authority of their order ; above all, that love of power and of ſhewing it, which reſides more or leſs in every human breaſt, and which, in popular aſſemblies, is inflamed, like every other paſſion, by communication and encouragement ; theſe motives, added to private deſigns and reſentments, cheriſhed alſo by popular acclamation, and operating upon the great ſhare of power already poſſeſſed by the houſe of commons, might induce a majority, or at leaſt a large party of men in that aſſembly, to unite in endeavouring to draw to themſelves the whole government of the ſtate ; or at leaſt ſo to obſtruct the conduct of public affairs, by a wanton and perverſe oppoſition, as to render it impoſſible for the wiſeſt ſtateſman to carry forwards the buſineſs of the nation with ſucceſs or ſatisfaction.

Some paſſages of our national hiſtory afford grounds for theſe apprehenſions. Before the acceſſion of James the Firſt, or, at leaſt, during the reigns of his three immediate predeceſſors, the government of England was a government by force ; that is, the king carried his meaſures in parliament by *intimidation*. A ſenſe of perſonal danger kept the members of the houſe of commons in ſubjection. A conjunction of fortunate cauſes delivered at laſt the parliament and nation from ſlavery. That overbearing ſyſtem, which had declined in the hands of James, expired early in the reign of his ſon. After the reſtoration, there ſucceeded in its place, and ſince the revolution has been methodically purſued, the more ſucceſsful expedient of *influence*. Now we remember what paſſed between the loſs of terror, and the eſtabliſhment of influence. The tranſactions of that interval, whatever we may think of their occaſion, or effect, no friend of regal government would wiſh to ſee revived.—But the affairs of this kingdom afford a more recent atteſtation to the ſame doctrine. In the Britiſh colonies of North America, the late aſſemblies poſſeſſed much of the power and conſtitution of our houſe of commons. The king and government of Great Britain held no patronage in the country, which could create attachment and influence, ſufficient to counteract that reſtleſs, arrogating ſpirit, which, in popular aſſemblies, when left to itſelf, will never brook an authority that checks and interferes with its own. To this cauſe, excited perhaps by ſome unſeaſonable provocations, we may attribute, as to their true and proper original, we will not ſay the misfortunes, but the changes, that have taken place in the Britiſh empire. The admonition, which ſuch examples ſuggeſt, will have its weight with thoſe, who are content with the general frame of the Engliſh conſtitution; and who conſider ſtability amongſt the firſt perfections of any government.

We proteſt, however, againſt any conſtruction, by which what is here ſaid ſhall be attempted to be applied to the juſtification of bribery, or of any clandeſtine reward or ſolicitation whatever. The very ſecrecy of ſuch negociations confeſſes or begets a conſciouſneſs of guilt; which when the mind is once taught to endure without uneaſineſs, the character is prepared for every compliance. And there is the greater danger in theſe corrupt practices, as the extent of their operation is unlimited and unknown. Our apology relates ſolely to that influence, which reſults from the acceptance or expectation of public preferments. Nor does the influence, which we defend, require any ſacrifice of perſonal probity. In political, above all other ſubjects, the arguments, or rather the conjectures on each ſide of the queſtion, are often ſo equally poized, that the wiſeſt judgments may be held in ſuſpenſe. Theſe I call ſubjects of *indifference*. But again, when the ſubject is not *indifferent* in itſelf, it will appear ſuch to a great part of thoſe to whom it is propoſed, for want of information, or reflection, or experience, or of capacity to collect and weigh the reaſons by which either ſide is ſupported. Theſe are ſubjects of *apparent indifference*. This indifference occurs ſtill more frequently in perſonal conteſts; in which, we do not often diſcover any reaſon of public utility, for the preference of one competitor to another. Theſe caſes compoſe the province of influence; that is, the deciſion in theſe caſes will inevitably be determined by influence of ſome ſort or other. The only doubt is, what influence ſhall be admitted. If you remove the influence of the crown, it is only to make way for influence from a different quarter. If motives of expectation and gratitude be withdrawn, other motives will ſucceed in their place, acting probably in an oppoſite direction, but equally irrelative and external to the proper merits of the queſtion. There exiſt, as we have ſeen, paſſions in the human heart, which will always make a ſtrong party againſt the executive power of a mixed government. According as the diſpoſition of parliament is friendly or adverſe to the recommendation of the crown in matters which are really or apparently indifferent, as indifference hath been now explained, the buſineſs of empire will be tranſacted with eaſe and convenience, or embarraſſed with endleſs contention and difficulty. Nor is it a concluſion founded in juſtice, or warranted by experience, that, becauſe men are induced by views of intereſt to yield their conſent to meaſures, concerning which their judgment decides nothing, they may be brought by the ſame influence, to act in deliberate oppoſition to knowledge and duty. Whoever reviews the operations of government in this country ſince the revolution, will find few, even of the moſt queſtionable meaſures of adminiſtration, about which the beſt inſtructed judgment might not have doubted at the time: but of which he may affirm with certainty, that they were *indifferent* to the greateſt part of thoſe who concurred in them. From the ſucceſs or the facility, with which they who dealt out the patronage of the crown carried meaſures like theſe, ought we to conclude, that a ſimilar application of honours and emoluments would procure the conſent of parliament to counſels evidently detrimental to the common welfare?—Is there not, on the contrary, more reaſon to fear, that the prerogative, if deprived of influence, would not be long able to ſupport itſelf? For when we reflect upon the power of the houſe of commons to extort a compliance with its reſolutions from the other parts of the legiſlature; or to put to death the conſtitution by a refuſal of the annual grants of money, to the ſupport of the neceſſary functions of government—— when we reflect alſo what motives there are, which, in the viciſſitudes of political intereſts and paſſions, may one day arm and point this power againſt the executive magiſtrate; when we attend to theſe conſiderations, we ſhall be led perhaps to acknowledge, that there is not more of paradox than of truth in that important, but much decried apophthegm, "that an independent parliament is incompatible with the exiſtence of the monarchy."

Chapter VIII.

OF THE ADMINISTRATION OF JUSTICE.

THE firſt maxim of a free ſtate is, that the laws be made by one ſet of men, and adminiſtered by another; in other words, that the legiſlative and judicial characters be kept ſeparate. When theſe offices are united in the ſame perſon or aſſembly, particular laws are made for particular caſes, ſpringing oftentimes from partial motives, and directed to private ends: whilſt they are kept ſeparate, general laws are made by one body of men, without foreſeeing whom they may affect; and, when made, muſt be applied by the other, let them affect whom they will.

For the ſake of illuſtration, let it be ſuppoſed, in this country, either that, parliaments being laid aſide, the courts of Weſtminſter Hall made their own laws; or that the two houſes of parliament, with the king at their head, tried, and decided cauſes at their bar: it is evident, in the firſt place, that the deciſions of ſuch a judicature would be ſo many laws; and, in the ſecond place, that, when the parties and the intereſts to be affected by the law were known, the inclinations of the law-makers would inevitably attach on one ſide or the other; and that, where there were neither any fixed rules to regulate their determinations, nor any ſuperior power to control their proceedings, theſe inclinations would interfere with the integrity of public juſtice. The conſequence of which muſt be, that the ſubjects of ſuch a conſtitution would live either without any conſtant laws, that is, without any known pre-eſtabliſhed rules of adjudication whatever; or, under laws made for particular caſes and particular perſons, and partaking of the contradictions and iniquity of the motives, to which they owed their origin.

Which dangers, by the diviſion of the legiſlative and judicial functions, are in this country effectually provided againſt. Parliament knows not the individuals upon whom its acts will operate; it has no caſes or parties before it; no private deſigns to ſerve; conſequently, its reſolutions will be ſuggeſted by the conſideration of univerſal effects and tendencies, which always produces impartial, and commonly advantageous regulations. When laws are made, courts of juſtice, whatever be the diſpoſition of the judges, muſt abide by them; for the legiſlative being neceſſarily the ſupreme power of the ſtate, the judicial and every other power is accountable to that; and it cannot be doubted, but that the perſons, who poſſeſs the ſovereign authority of government, will be tenacious of the laws which they themſelves preſcribe, and ſufficiently jealous of the aſſumption of diſpenſing and legiſlative power by any others.

This fundamental rule of civil juriſprudence is violated in the caſe of acts of attainder or confiſcation, in bills of pains and penalties, and in all *ex poſt facto* laws whatever, in which parliament exerciſes the double office of legiſlator and judge. And whoever either underſtands the value of the rule itſelf, or collects the hiſtory of thoſe inſtances in which it has been invaded, will be induced, I believe, to acknowledge, that it had been wiſer and ſafer never to have departed from it. He will confeſs, at leaſt, that nothing but the moſt manifeſt and immediate peril of the commonwealth will juſtify a repetition of theſe dangerous examples. If the laws in being do not puniſh an offender, let him go unpuniſhed; let the legiſlature, admoniſhed of the defect of the laws, provide againſt the commiſſion of future crimes of the ſame ſort. The eſcape of one delinquent can never produce ſo much harm to the community, as may ariſe from the infraction of a rule, upon which the purity of public juſtice, and the exiſtence of civil liberty, eſſentially depend.

The next ſecurity for the impartial adminiſtration of juſtice, eſpecially in deciſions to which government is a party, is the independency of the judges. As protection againſt every illegal attack upon the rights of the ſubject by the ſervants of the crown is to be ſought for from theſe tribunals, the judges of the land become not unfrequently the arbitrators between the king and the people. On which account they ought to be independent of either; or, what is the ſame thing, equally dependent upon both; that is, if they be appointed by the one, they ſhould be removeable only by the other. This was the policy which dictated that memorable improvement in our conſtitution, by which the judges, who, before the revolution, held their offices during the pleaſure of the king, can now only be deprived of them by an addreſs from both houſes of parliament; as the moſt regular, ſolemn, and authentic way, by which the diſſatisfaction of the people can be expreſſed. To make this independency of the judges complete, the public ſalaries of their office ought not only to be certain, both in amount and continuance, but ſo liberal as to ſecure their integrity from the temptation of ſecret bribes: which liberality will anſwer alſo the farther purpoſe of preſerving their juriſdiction from contempt, and their characters from ſuſpicion; as well as of rendering the office worthy of the ambition of men of eminence in their profeſſion.

A third precaution, to be obſerved in the formation of courts of juſtice, is, that the number of the judges be ſmall. For, beſide that the violence and tumult inſeparable from large aſſemblies are inconſiſtent with the patience, method, and attention requiſite in judicial inveſtigations; beſide that all paſſions and prejudices act with augmented force upon a collected multitude; beſide theſe objections, judges, when they are numerous, *divide* the ſhame of an unjuſt determination; they ſhelter themſelves under one another's example; each man thinks his own character hid in the crowd: for which reaſon the judges ought always to be ſo few, as that the conduct of each may be conſpicuous to public obſervation; that each may be reſponſible in his ſeparate and particular reputation for the deciſions in which he concurs. The truth of the above remark has been exemplified in this country, in the effects of that wiſe regulation which transferred the trial of parliamentary elections from the houſe of commons at large, to a ſelect committee of that houſe compoſed of thirteen members. This alteration, ſimply by reducing the number of the judges, and, in conſequence of that reduction, expoſing the judicial conduct of each to public animadverſion, has given to a judicature, which had been long ſwayed by intereſt and ſolicitation, the ſolemnity and virtue of the moſt upright tribunals.—I ſhould prefer an even to an odd number of judges, and four to almoſt any other number; for in this number, beſide that it ſufficiently conſults the idea of ſeparate reſponſibility, nothing can be decided but by a majority of three to one. And when we conſider that every deciſion eſtabliſhes a perpetual precedent, we ſhall allow that it ought to proceed from an authority not leſs than this. If the court be equally divided, nothing is done; things remain as they were; with ſome inconveniency, indeed, to the parties, but without the danger to the public of a haſty precedent.

A fourth requiſite in the conſtitution of a court of juſtice, and equivalent to many checks upon the diſcretion of judges, is, that its proceedings be carried on in public, *apertis foribus*; not only before a promiſcuous concourſe of byſtanders, but in the audience of the whole profeſſion of the law. The opinion of the Bar concerning what paſſes will be impartial; and will commonly guide that of the public. The moſt corrupt judge will fear to indulge his diſhoneſt wiſhes in the preſence of ſuch an aſſembly: he muſt encounter what few can ſupport, the cenſure of his equals and companions, together with the indignation and reproaches of his country.

Something is alſo gained to the public by appointing two or three courts of concurrent juriſdiction, that it may remain in the option of the ſuitor to which he will reſort. By this means a tribunal, which may happen to be occupied by ignorant or ſuſpected judges, will be deſerted for others that poſſeſs more of the confidence of the nation.

But, laſtly, if ſeveral courts co-ordinate to, and independent of each other, ſubſiſt together in the country, it ſeems neceſſary that the appeals from all of them ſhould meet and terminate in the ſame judicature; in order that one ſupreme tribunal, by whoſe final ſentence all others are bound and concluded, may ſuperintend and preſide over the reſt. This conſtitution is neceſſary for two purpoſes:—to preſerve an uniformity in the deciſions of inferior courts, and to maintain to each the proper limits of its juriſdiction. Without a common ſuperior, different courts might eſtabliſh contradictory rules of adjudication, and the contradiction be final and without remedy; the ſame queſtion might receive oppoſite determinations, according as it was brought before one court or another, and the determination in each be ultimate and irreverſible. A common appellant juriſdiction prevents or puts an end to this confuſion. For when the judgments upon appeals are conſiſtent, which may be expected, whilſt it is the ſame court which is at laſt reſorted to, the different courts, from which the appeals are brought, will be reduced to a like conſiſtency with one another. Moreover, if queſtions ariſe between courts independent of each other, concerning the extent and boundaries of their reſpective juriſdiction, as each will be deſirous of enlarging its own, an authority which both acknowledge can alone adjuſt the controverſy. Such a power, therefore, muſt reſide ſomewhere, leſt the rights and repoſe of the country be diſtracted, by the endleſs oppoſition and mutual encroachments of its courts of juſtice.

There are two kinds of judicature; the one, where the office of the judge is permanent in the ſame perſon, and conſequently where the judge is appointed and known long before the trial; the other, where the judge is determined by lot at the time of the trial, and for that turn only. The one may be called a *fixed*, the other a *caſual* judicature. From the former may be expected thoſe qualifications, which are preferred and ſought for in the choice of judges, and that knowledge and readineſs which reſult from experience in the office. But then, as the judge is known beforehand, he is acceſſible to the parties; there exiſts a poſſibility of ſecret management and undue practices: or, in conteſts between the crown and the ſubject, the judge appointed by the crown may be ſuſpected of partiality to his patron; or of entertaining inclinations favourable to the authority from which he derives his own. The advantage attending the ſecond kind of judicature is indifferency; the defect, the want of that legal ſcience, which produces uniformity and juſtice in legal deciſions. The conſtruction of Engliſh courts of law, in which cauſes are tried by a jury with the aſſiſtance of a judge, combines the two ſpecies together with peculiar ſucceſs. This admirable contrivance unites the wiſdom of a fixed with the integrity of a caſual judicature, and avoids, in a great meaſure, the inconveniencies of both. The judge imparts to the jury the benefit of his erudition and experience; the jury, by their diſintereſtedneſs, check any corrupt partialities which previous application may have produced in the judge. If the determination was left to the judge, the party might ſuffer under the ſuperior intereſt of his adverſary: if it was left to an uninſtructed jury, his rights would be in ſtill greater danger from the ignorance of thoſe who were to decide upon them. The preſent wiſe admixture of chance and choice in the conſtitution of the court, in which his cauſe is tried, guards him equally againſt the fear of injury from either of theſe cauſes.

In proportion to the acknowledged excellency of this mode of trial, every deviation from it ought to be watched with vigilance, and admitted by the legiſlature with caution and reluctance. Summary convictions before juſtices of the peace, eſpecially for offences againſt the game laws; courts of conſcience, extending the juriſdiction of courts of equity; urging too far the diſtinction between queſtions of law and matters of fact, are all ſo many infringements upon this great charter of public ſafety.

Nevertheleſs, the trial by jury is ſometimes found inadequate to the adminiſtration of equal juſtice. This imperfection takes place chiefly in diſputes, in which ſome popular paſſion or prejudice intervenes; as where a particular order of men advance claims upon the reſt of the community, which is the caſe of the clergy contending for tythes; or where an order of men are obnoxious by their profeſſion, as are officers of the revenue, bailiffs, bailiffs' followers, and other low miniſters of the law; or where one of the parties has an intereſt in common with the general intereſt of the jurors, and that of the other is oppoſed to it, as in conteſts between landlords and tenants, between lords of manors and the holders of eſtates under them; or, laſtly, where the minds of men are inflamed by political diſſenſions or religious hatred. Theſe prejudices act moſt powerfully upon the common people, of which order juries are made up. The force and danger of them are alſo increaſed by the very circumſtance of taking juries out of the county in which the ſubject of diſpute ariſes. In the neighbourhood of the parties the cauſe is often prejudged: and theſe ſecret deciſions of the mind proceed commonly more upon ſentiments of favour or hatred; upon ſome opinion concerning the ſect, family, profeſſion, character, connexions, or circumſtances of the parties, than upon any knowledge or diſcuſſion of the proper merits of the queſtion. More exact juſtice would, in many inſtances, be rendered to the ſuitors, if the determination were left entirely to the judges; provided we could depend upon the ſame purity of conduct, when the power of theſe magiſtrates was enlarged, which they have long manifeſted in the exerciſe of a mixed and reſtrained authority. But this is an experiment too big with public danger to be hazarded. The effects, however, of ſome local prejudices might be ſafely obviated, by a law empowering the court, in which the action is brought, to ſend the cauſe to trial in a diſtant county; the expenſes attending the change of place, always falling upon the party who applied for it.

There is a ſecond diviſion of courts of juſtice, which preſents a new alternative of difficulties. Either one, two, or a few ſovereign courts may be erected in the metropolis, for the whole kingdom to reſort to; or courts of local juriſdiction may be fixed in various provinces and diſtricts of the empire. Great, though oppoſite, inconveniencies attend each arrangement. If the court be remote and ſolemn, it becomes, by theſe very qualities, expenſive and dilatory: the expenſe is unavoidably increaſed when witneſſes, parties, and agents muſt be brought to attend from diſtant parts of the country: and, where the whole judicial buſineſs of a large nation is collected into a few ſuperior tribunals, it will be found impoſſible, even if the prolixity of forms which retards the progreſs of cauſes were removed, to give a prompt hearing to every complaint, or an immediate anſwer to any. On the other hand, if to remedy theſe evils, and to render the adminiſtration of juſtice cheap and ſpeedy, domeſtic and ſummary tribunals be erected in each neighbourhood, the advantage of ſuch courts will be accompanied with all the dangers of ignorance and partiality, and with the certain miſchief of confuſion and contrariety in their deciſions. The law of England, by its circuit or itinerary courts, contains a proviſion for the diſtribution of private juſtice, in a great meaſure relieved from both theſe objections. As the preſiding magiſtrate comes into the country a ſtranger to its prejudices, rivalſhips and connexions, he brings with him none of thoſe attachments and regards, which are ſo apt to pervert the courts of juſtice, when the parties and the judges inhabit the ſame neighbourhood. Again, as this magiſtrate is uſually one of the judges of the ſupreme tribunals of the kingdom, and has paſſed his life in the ſtudy and adminiſtration of the laws, he poſſeſſes, it may be preſumed, thoſe profeſſional qualifications, which befit the dignity and importance of his ſtation. Laſtly, as both he, and the advocates who accompany him in his circuit, are employed in the buſineſs of thoſe ſuperior courts, (to which alſo their proceedings are amenable) they will naturally conduct themſelves by the rules of adjudication, which they have applied, or learnt there: and by this means maintain, what conſtitutes a principal perfection of civil government, one law of the land in every part and diſtrict of the empire.

Next to the conſtitution of courts of juſtice, we are naturally led to conſider the maxims which ought to guide their proceedings: and upon this ſubject, the chief inquiry will be, how far, and for what reaſons, it is expedient to adhere to former determinations; or whether it be neceſſary for judges to attend to any other conſideration than the apparent and particular equity of the caſe before them. Now, although to aſſert, that precedents eſtabliſhed by one ſet of judges, ought to be incontrovertible by their ſucceſſors in the ſame juriſdiction, or by thoſe who exerciſe a higher, would be to attribute to the ſentence of thoſe judges all the authority we aſcribe to the moſt ſolemn acts of the legiſlature; yet, the general ſecurity of private rights, and of civil life, requires, that ſuch precedents, eſpecially if they have been confirmed by repeated adjudications, ſhould not be overthrown without a detection of manifeſt error, or without ſome imputation of diſhoneſty upon the court by whoſe judgment the queſtion was firſt decided. And this deference to prior deciſions is founded upon two reaſons: firſt, that the diſcretion of judges may be bound down by poſitive rules; and, ſecondly, that the ſubject, upon every occaſion, in which his legal intereſt is concerned, may know beforehand how to act, and what to expect. To ſet judges free from any obligation to conform themſelves to the deciſions of their predeceſſors, would be to lay open a latitude of judging, with which no deſcription of men can ſafely be intruſted: it would be to allow ſpace for the exerciſe of thoſe concealed partialities, which, ſince they cannot by any human policy be excluded, ought to be confined by boundaries and landmarks. It is in vain to allege, that the ſuperintendency of parliament is always at hand to control and puniſh abuſes of judicial diſcretion. By what rules can parliament proceed? How ſhall they pronounce a deciſion to be wrong, where there exiſts no acknowledged meaſure or ſtandard of what is right, which, in a multitude of inſtances, would be the caſe, if prior determinations were no longer to be appealed to?

Diminiſhing the danger of partiality, is one thing gained by adhering to precedents; but not the principal thing. The ſubject of every ſyſtem of laws muſt expect that deciſion in his own caſe, which he knows that others have received in caſes ſimilar to his. If he expect not this, he can expect nothing. There exiſts no other rule or principle of reaſoning, by which he can foretel, or even conjecture the event of a judicial conteſt. To remove therefore the grounds of this expectation, by rejecting the force and authority of precedents, is to entail upon the ſubject the worſt property of ſlavery—to have no aſſurance of his rights, or knowledge of his duty. The quiet alſo of the country, as well as the confidence and ſatiſfaction of each man's mind, requires uniformity in judicial proceedings. Nothing quells a ſpirit of litigation like deſpair of ſucceſs: therefore, nothing ſo completely puts an end to law-ſuits, as a rigid adherence to known rules of adjudication. Whilſt the event is uncertain, which it ever muſt be, whilſt it is uncertain whether former determinations upon the ſame ſubject will be followed or not, law-ſuits will be endleſs and innumerable: men will commonly engage in them, either from the hope of prevailing in their claims, which the ſmalleſt chance is ſufficient to encourage; or with the deſign of intimidating their adverſary by the terrors of a dubious litigation. When juſtice is rendered to the parties, only half the buſineſs of a court of juſtice is done: the more important part of its office remains—to put an end, for the future, to every fear, and quarrel, and expenſe upon the ſame point; and ſo to regulate its proceedings, that not only a doubt once decided may be ſtirred no more, but that the whole train of law-ſuits, which iſſue from one uncertainty, may die with the parent queſtion. Now this advantage can only be attained by conſidering each deciſion as a direction to ſucceeding judges.—And it ſhould be obſerved, that every departure from former determinations, eſpecially if they have been often repeated, or long ſubmitted to, ſhakes the ſtability of all legal title. It is not fixing a point anew; it is leaving every thing unfixed. For, by the ſame ſtretch of power, by which the preſent race of judges take upon them to contradict the judgment of their predeceſſors, thoſe who try the queſtion next, may ſet aſide theirs.

From an adherence, however, to precedents, by which ſo much is gained to the public, two conſequences ariſe which are often lamented; the hardſhip of particular determinations, and the intricacy of the law as a ſcience. To the firſt of theſe complaints, we muſt apply this reflection, "that uniformity is of more importance than equity, in proportion as a general uncertainty would be a greater evil than particular injuſtice." The ſecond is attended with no greater inconveniency than that of erecting the practice of the law into a ſeparate profeſſion: which this reaſon, we allow, makes neceſſary; for if we attribute ſo much authority to precedents, it is expedient that they be known in every cauſe, both to the advocates and to the judge: this knowledge cannot be general, ſince it is the fruit oftentimes of laborious reſearch, or demands a memory ſtored with long-collected erudition.

To a mind revolving upon the ſubject of human juriſprudence, there frequently occurs this queſtion; why, ſince the maxims of natural juſtice are few and evident, do there ariſe ſo many doubts and controverſies in their application? Or, in other words, how comes it to paſs, that, although the principles of the law of nature be ſimple, and for the moſt part ſufficiently obvious, there ſhould exiſt nevertheleſs, in every ſyſtem of municipal laws, and in the actual adminiſtration of relative juſtice, numerous uncertainties and acknowledged difficulty? Whence, it may be aſked, ſo much room for litigation, and ſo many ſubſiſting diſputes, if the rules of human duty be neither obſcure nor dubious? If a ſyſtem of morality, containing both the precepts of revelation, and the deductions of reaſon, may be compriſed within the compaſs of one moderate volume; and the moraliſt be able, as he pretends, to deſcribe the rights and obligations of mankind, in all the different relations they may hold to one another, what need of thoſe codes of poſitive and particular inſtitutions, of thoſe tomes of ſtatutes and reports, which require the employment of a long life even to peruſe? And this queſtion is immediately connected with the argument which has been diſcuſſed in the preceding paragraph; for unleſs there be found ſome greater uncertainty in the law of nature, or what may be called natural equity, when it comes to be applied to real caſes and to actual adjudication, than what appears in the rules and principles of the ſcience, as delivered in the writings of thoſe who treat of the ſubject, it were better that the determination of every cauſe ſhould be left to the conſcience of the judge, unfettered by precedents and authorities; ſince the very purpoſe for which theſe are introduced, is to give a certainty to judicial proceedings, which ſuch proceedings would want without them.

Now, to account for the exiſtence of ſo many ſources of litigation, notwithſtanding the clearneſs and perfection of natural juſtice, it ſhould be obſerved, in the firſt place, that treatiſes of morality always ſuppoſe facts to be aſcertained; and not only ſo, but the intention likewiſe of the parties to be known and laid bare. For example, when we pronounce that promiſes ought to be fulfilled, in that ſenſe in which the promiſer apprehended, at the time of making the promiſe, the other party received and underſtood it, the apprehenſion of one ſide, and the expectation of the other, muſt be diſcovered before this rule can be reduced to practice, or applied to the determination of any actual diſpute. Wherefore the diſcuſſion of facts, which the moraliſt ſuppoſes to be ſettled; the diſcovery of intentions, which he preſumes to be known, ſtill remain to exerciſe the inquiry of courts of juſtice. And as theſe facts and intentions are often to be inferred, or rather conjectured, from obſcure indications, from ſuſpicious teſtimony, or from a compariſon of oppoſite and contending probabilities, they afford a never-failing ſupply of doubt and litigation. For which reaſon, as hath been obſerved in a former part of this work, the ſcience of morality is to be conſidered rather as a direction to the parties, who are conſcious of their own thoughts, and motives, and deſigns, to which conſciouſneſs the teacher of morality conſtantly appeals; than as a guide to the judge, or to any third perſon, whoſe arbitration muſt proceed upon rules of evidence, and maxims of credibility, with which the moraliſt has no concern.

Secondly. There exiſt a multitude of caſes, in which the law of nature, that is, the law of public expediency, preſcribes nothing, except that ſome certain rule be adhered to, and that the rule actually eſtabliſhed be preſerved; it either being indifferent what rule obtains, or, out of many rules, no one being ſo much more advantageous than the reſt, as to recompenſe the inconveniency of an alteration. In all ſuch caſes, the law of nature ſends us to the law of the land. She directs that either ſome fixed rule be introduced by an act of the legiſlature, or that the rule which accident, or cuſtom, or common conſent hath already eſtabliſhed, be ſteadily maintained. Thus, in the deſcent of lands, or the inheritance of perſonals from inteſtate proprietors, whether the kindred of the grandmother, or of the great-grandmother, ſhall be preferred in the ſucceſſion; whether the degrees of conſanguinity ſhall be computed through the common anceſtor, or from him; whether the widow ſhall take a third or a moiety of her huſband's fortune; whether ſons ſhall be preferred to daughters, or the elder to the younger; whether the diſtinction of age ſhall be regarded amongſt ſiſters, as well as between brothers; in theſe, and in a great variety of queſtions which the ſame ſubject ſupplies, the law of nature determines nothing. The only anſwer ſhe returns to our inquiries is, that ſome certain and general rule be laid down by public authority; be obeyed when laid down; and that the quiet of the country be not diſturbed, nor the expectation of heirs fruſtrated by capricious innovations. This ſilence or neutrality of the law of nature, which we have exemplified in the caſe of inteſtacy, holds concerning a great part of the queſtions that relate to the right or acquiſition of property. Recourſe then muſt neceſſarily be had to ſtatutes, or precedents, or uſage, to fix what the law of nature has left looſe. The interpretation of theſe ſtatutes, the ſearch after precedents, the inveſtigation of cuſtoms, compoſe therefore an unavoidable, and at the ſame time, a large and intricate portion of forenſic buſineſs. Poſitive conſtitutions or judicial authorities are, in like manner, wanted, to give preciſion to many things, which are in their nature *indeterminate.* The age of legal diſcretion; at what time of life a perſon ſhall be deemed competent to the performance of any act, which may bind his property; whether at twenty, or twenty-one, or earlier, or later, or at ſome point of time between theſe years, can only be aſcertained by a poſitive rule of the ſociety to which the party belongs. The line has not been drawn by nature; the human underſtanding advancing to maturity by inſenſible degrees, and its progreſs varying in different individuals. Yet it is neceſſary, for the ſake of mutual ſecurity, that a preciſe age be fixed, and that what is fixed be known to all. It is on theſe occaſions that the intervention of law ſupplies the inconſtancy of nature.—Again, there are other things which are perfectly *arbitrary*, and capable of no certainty but what is given to them by poſitive regulation. It is fit that a limited time ſhould be aſſigned to defendants, to plead to the complaints alleged againſt them; and alſo that the default of pleading within a certain time, ſhould be taken for a confeſſion of the charge; but to how many days or months that term ſhould be extended, though neceſſary to be known with certainty, cannot be known at all, by any information which the law of nature affords. And the ſame remark ſeems applicable to almoſt all thoſe rules of proceeding, which conſtitute what is called the practice of the court: as they cannot be traced out by reaſoning, they muſt be ſettled by authority.

Thirdly. In contracts, whether expreſs or implied, which involve a great number of conditions, as in thoſe which are entered into between maſters and ſervants, principals and agents; many alſo of merchandize, or for works of art; in ſome likewiſe which relate to the negociation of money or bills, or to the acceptance of credit or ſecurity; the original deſign and expectation of the parties was, that both ſides ſhould be guided by the courſe and cuſtom of the country in tranſactions of the ſame ſort. Conſequently, when theſe contracts come to be diſputed, natural juſtice can only refer to that cuſtom. But as ſuch cuſtoms are not always ſufficiently uniform or notorious, but often to be collected from the production and compariſon of inſtances and accounts repugnant to one another; and each cuſtom being only that, after all, which amongſt a variety of uſages ſeems to predominate, we have *here* alſo ample room for doubt and conteſt.

Fourthly. As the law of nature, founded in the very conſtruction of human ſociety, which is formed to endure through a ſeries of periſhing generations, requires that the juſt engagements a man enters into, ſhould continue in force beyond his own life; it follows that the private rights of perſons frequently depend upon what has been tranſacted, in times remote from the preſent, by their anceſtors or predeceſſors, by thoſe under whom they claim, or to whoſe obligations they have ſucceeded. Thus the queſtions which uſually ariſe between lords of manors and their tenants, between the king and thoſe who claim royal franchiſes, or between them and the perſons affected by theſe franchiſes, depend upon the terms of the original grant. In like manner every diſpute concerning tythes, in which an exemption or compoſition is pleaded, depends upon the agreement which took place between the predeceſſor of the claimant, and the ancient owner of the land. The appeal to theſe grants and agreements is dictated by natural equity, as well as by the municipal law: but concerning the exiſtence, or the conditions of ſuch old covenants, doubts will perpetually occur, to which the law of nature affords no ſolution. The loſs or decay of records, the periſhableneſs of living memory, the corruption and careleſſneſs of tradition, all conſpire to multiply uncertainties upon this head; what cannot be produced or proved, muſt be left to looſe and fallible preſumption. Under the ſame head may be included another topic of altercation; the tracing out of boundaries, which time, or neglect, or unity of poſſeſſion, or mixture of occupation has confounded or obliterated. To which ſhould be added a difficulty which often preſents itſelf in diſputes concerning rights of *way*, both public and private, and of thoſe eaſements which one man claims in another man's property; namely, that of diſtinguiſhing, after a lapſe of years, the uſe of an indulgence from the exerciſe of a right.

Fifthly. The quantity or extent of an injury, even when the cauſe and author of it are known, is often dubious and undefined. If the injury conſiſt in the loſs of ſome ſpecific right, the value of the right meaſures the amount of the injury; but what a man may have ſuffered in his perſon, from an aſſault; in his reputation, by ſlander; or in the comfort of his life, by the ſeduction of a wife or daughter; or what ſum of money ſhall be deemed a reparation for damages ſuch as theſe, cannot be aſcertained by any rules, which the law of nature ſupplies. The law of nature commands that reparation be made; and adds to her command, that, when the aggreſſor and the ſufferer diſagree, the damage be aſſeſſed by authorized and indifferent arbitrators. Here, then, recourſe muſt be had to courts of law, not only with the permiſſion, but, in ſome meaſure, by the direction of natural juſtice.

Sixthly. When controverſies ariſe in the interpretation of written laws, they, for the moſt part, ariſe upon ſome contingency which the compoſer of the law did not foreſee or think of. In the adjudication of ſuch caſes, this dilemma preſents itſelf: if the laws be permitted to operate only upon the caſes, which were actually contemplated by the law makers, they will always be found defective: if they be extended to every caſe, to which the reaſoning, and ſpirit, and expediency of the proviſion ſeem to belong, without any farther evidence of the intention of the legiſlature, we ſhall allow to the judges a liberty of applying the law, which will fall very little ſhort of the power of making it. If a literal conſtruction be adhered to, the law will often fail of its end: if a looſe and vague expoſition be admitted, the law might as well have never been enacted; for this licenſe will bring back into the ſubject all the diſcretion and uncertainty which it was the deſign of the legiſlature to take away. Courts of juſtice are, and always muſt be, embarraſſed by theſe oppoſite difficulties: and as it can never be known beforehand, in what degree either conſideration may prevail in the mind of the judge, there remains an unavoidable cauſe of doubt, and a place for contention.

Seventhly. The deliberations of courts of juſtice upon every *new* queſtion are encumbered with additional difficulties, in conſequence of the authority which the judgment of the court poſſeſſes, as a precedent to future judicatures: which authority appertains not only to the concluſions the court delivers, but to the principles and arguments upon which they are built. The view of this effect makes it neceſſary for a judge to look beyond the caſe before him; and, beſide the attention he owes to the truth and juſtice of the cauſe between the parties, to reflect whether the principles, and maxims, and reaſoning, which he adopts and authorizes, can be applied with ſafety to all caſes, which admit of a compariſon with the preſent. The deciſion of the cauſe, were the effects of the deciſion to ſtop there, might be eaſy: but the conſequence of eſtabliſhing the principle, which ſuch a deciſion aſſumes, may be difficult, though of the utmoſt importance, to be foreſeen and regulated.

Finally. After all the certainty and reſt that can be given to points of law, either by the interpoſition of the legiſlature, or the authority of precedents, one principal ſource of diſputation, and into which indeed the greater part of legal controverſies may be reſolved, will remain ſtill, namely, "the competition of oppoſite analogies." When a point of law has been once adjudged, neither that queſtion, nor any which completely and in all its circumſtances correſponds with *that*, can be brought a ſecond time into diſpute: but queſtions ariſe, which reſemble this only indirectly and in part, in certain views and circumſtances, and which may ſeem to bear an equal or a greater affinity to other adjudged caſes; queſtions, which can be brought within any affixed rule only by analogy, and which hold a relation by analogy to different rules. It is by the urging of the different analogies that the contention of the Bar is carried on: and it is in the compariſon, adjuſtment, and reconciliation of them with one another; in the diſcerning of ſuch directions, and in the framing of ſuch a determination, as may either ſave the various rules alleged in the cauſe, or, if that be impoſſible, may give up the weaker analogy to the ſtronger, that the ſagacity and wiſdom of the court are ſeen and exerciſed. Amongſt a thouſand inſtances of this, we may cite one of general notoriety in the conteſt that has lately been agitated concerning literary property. The perſonal induſtry, which an author expends, upon the compoſition of his work, bears ſo near a reſemblance to that, by which every other kind of property is earned, or deſerved, or acquired; or rather there exiſts ſuch a correſpondency between what is created by the ſtudy of a man's mind, and the production of his labour in any other way of applying it, that he ſeems entitled to the ſame excluſive, aſſignable, and perpetual right in both; and that right to the ſame protection of law. This was the analogy contended for on one ſide. On the other hand, a book, as to the author's right in it, appears ſimilar to an invention of art, as a machine, an engine, a medicine. And ſince the law permits theſe to be copied, or imitated, except where an excluſive uſe or ſale is reſerved to the inventor by patent, the ſame liberty ſhould be allowed in the publication and ſale of books. This was the analogy maintained by the advocates of an open trade. And the competition of theſe oppoſite analogies conſtituted the difficulty of the caſe, as far as the ſame was argued, or adjudged upon principles of common law. —One example may ſerve to illuſtrate our meaning; but whoever takes up a volume of reports, will find moſt of the arguments it contains capable of the ſame analyſis; although the analogies, it muſt be confeſſed, are ſometimes ſo entangled as not to be eaſily unravelled, or even perceived.

Doubtful and obſcure points of law are not, however, nearly ſo numerous as they are apprehended to be. Out of the multitude of cauſes, which in the courſe of each year are brought to trial in the metropolis, or upon the circuits, there are few in which any point is reſerved for the judgment of ſuperior courts. Yet theſe few contain all the doubts, with which the law is chargeable: for, as to the reſt, the uncertainty, as hath been ſhewn above, is not in the law, but in the means of human information.

There are two peculiarities, in the judicial conſtitution of this country, which do not carry with them that evidence of their propriety, which recommends almoſt every other part of the ſyſtem. The firſt of theſe is the rule, which requires that juries be *unanimous* in their verdicts. To expect that twelve men, taken by lot out of a promiſcuous multitude, ſhould agree in their opinion upon points confeſſedly dubious, and upon which oftentimes the wiſeſt judgments might be held in ſuſpenſe; or to ſuppoſe that any real *unanimity*, or change of opinion in the diſſenting jurors, could be procured by confining them until they all conſented to the ſame verdict; beſpeaks more of the conceit of a barbarous age, than of the policy which could dictate ſuch an inſtitution as that of juries. Nevertheleſs, the effects of this rule are not ſo detrimental, as the rule itſelf is unreaſonable: in criminal proſecutions it operates conſiderably in favour of the priſoner; for if a juror find it neceſſary to ſurrender to the obſtinacy of others, he will much more readily reſign his opinion on the ſide of mercy, than of condemnation: in civil ſuits it adds weight to the direction of the judge; for when a conference with one another does not ſeem likely to produce, in the jury, the agreement that is neceſſary, they will naturally cloſe their diſputes by a common ſubmiſſion to the opinion delivered from the bench. However, there ſeems to be leſs of the concurrence of ſeparate judgments in the ſame concluſion; conſequently, leſs aſſurance that the concluſion is founded in reaſons of apparent truth and juſtice, than if the deciſion were left to a plurality, or to ſome certain majority of voices.

The ſecond circumſtance in our conſtitution, which, however it may ſucceed in practice, does not ſeem to have been ſuggeſted by any intelligible fitneſs in the nature of the thing, is the choice that is made of the *Houſe of Lords*, as a court of appeal from every civil court of judicature in the kingdom; and the laſt alſo and higheſt appeal, to which the ſubject can reſort. There appears to be nothing in the conſtitution of that aſſembly; in the education, habits, character, or profeſſions of the members who compoſe it; in the mode of their appointment, or the right by which they ſucceed to their places in it, that ſhould qualify them for this arduous office; except, perhaps, that the elevation of their rank and fortune affords a ſecurity againſt the offer and influence of ſmall bribes. Officers of the army and navy, courtiers, eccleſiaſtics; young men who have juſt attained the age of twenty-one, and who have paſſed their youth in the diſſipation and purſuits which commonly accompany the poſſeſſion or inheritance of great fortunes; country gentlemen occupied in the management of their eſtates, or in the care of their domeſtic concerns and family intereſts; the greater part of the aſſembly born to their ſtation, that is, placed in it by chance; moſt of the reſt advanced to the peerage, for ſervices, and from motives utterly unconnected with legal erudition—theſe men compoſe the tribunal, to which the conſtitution intruſts the interpretation of her laws, and the ultimate deciſion of every diſpute betwen her ſubjects—Theſe are the men aſſigned to review judgments of law, pronounced by ſages of the profeſſion, who have ſpent their lives in the ſtudy and practice of the juriſprudence of their country. Such is the order which our anceſtors have eſtabliſhed. The effect only proves the truth of this maxim, "that when a ſingle inſtitution is extremely diſſonant from other parts of the ſyſtem to which it belongs, it will always find ſome way of reconciling itſelf to the analogy which governs and pervades the reſt." By conſtantly placing in the houſe of lords ſome of the moſt eminent and experienced lawyers in the kingdom; by calling to their aid the advice of the judges, when any abſtract queſtion of law awaits their determination; by the almoſt implicit and undiſputed deference, which the uninformed part of the houſe find it neceſſary to pay to the learning of their colleagues, the appeal to the houſe of lords becomes in fact an appeal to the collected wiſdom of our ſupreme courts of juſtice: receiving indeed ſolemnity, but little perhaps of direction, from the preſence of the aſſembly in which it is heard and determined.

Theſe, however, even if real, are minute imperfections. A politician, who ſhould ſit down to delineate a plan for the diſpenſation of public juſtice, guarded againſt all acceſs to influence and corruption, and bringing together the ſeparate advantages of knowledge and impartiality, would find, when he had done, that he had been tranſcribing the judicial conſtitution of England. And it may teach the moſt diſcontented amongſt us to acquieſce in the government of his country; to reflect, that the pure, and wiſe, and equal adminiſtration of the laws, forms the firſt end and bleſſing of ſocial union: and that this bleſſing is enjoyed by him in a perfection, which he will ſeek in vain, in any other nation of the world.

Chapter IX.

OF CRIMES AND PUNISHMENTS.

THE proper end of human puniſhment is, not the ſatisfaction of juſtice, but the prevention of crimes. By the ſatisfaction of juſtice, I mean the retribution of ſo much pain for ſo much guilt; which is the diſpenſation we expect at the hand of God, and which we are accuſtomed to conſider as the order of things that perfect juſtice dictates and requires. In what ſenſe, or whether with truth in any ſenſe, juſtice may be ſaid to demand the puniſhment of offenders, I do not now inquire; but I aſſert that this *demand* is not the motive or occaſion of human puniſhment. What would it be to the magiſtrate that offences went altogether unpuniſhed, if the impunity of the offenders were followed by no danger or prejudice to the commonwealth? The fear leſt the eſcape of the criminal ſhould encourage him, or others by his example, to repeat the ſame crime, or to commit different crimes, is the ſole conſideration which authorizes the infliction of puniſhment by human laws. Now that, whatever it be, which is the cauſe and end of the puniſhment, ought undoubtedly to regulate the meaſure of its ſeverity. But this cauſe appears to be founded, not in the guilt of the offender, but in the neceſſity of preventing the repetition of the offence. And from hence reſults the reaſon, that crimes are not by any government puniſhed in proportion to their guilt, nor in all caſes ought to be ſo, but in proportion to the difficulty and the neceſſity of preventing them. Thus the ſtealing of goods privately out of a ſhop, may not, in its moral quality, be more criminal than the ſtealing of them out of a houſe; yet, being equally neceſſary, and more difficult to be prevented, the law, in certain circumſtances, denounces againſt it a ſeverer puniſhment. The crime muſt be prevented by ſome means or other; and conſequently, whatever means appear neceſſary to this end, whether they be proportionable to the guilt of the criminal or not, are adopted rightly, becauſe they are adopted upon the principle which alone juſtifies the infliction of puniſhment at all. From the ſame conſideration it alſo follows, that puniſhment ought not to be employed, much leſs rendered ſevere, when the crime can be prevented by any other means. Puniſhment is an evil to which the magiſtrate reſorts only from its being neceſſary to the prevention of a greater. This neceſſity does not exiſt, when the end may be attained, that is, when the public may be defended from the effects of the crime, by any other expedient. The ſanguinary laws which have been made againſt counterfeiting or diminiſhing the gold coin of the kingdom might be juſt, until the method of detecting the fraud by weighing the money, was introduced into general uſage. Since that precaution was practiſed, theſe laws have ſlept; and an execution under them at this day would be deemed a meaſure of unjuſtifiable ſeverity. The ſame principle accounts for a circumſtance, which has been often cenſured as an abſurdity in the penal laws of this, and of moſt modern nations, namely, that breaches of truſt are either not puniſhed at all, or puniſhed with leſs rigour than other frauds.—Wherefore is it, ſome have aſked, that a violation of confidence, which increaſes the guilt, ſhould mitigate the penalty? This lenity, or rather forbearance of the laws, is founded in the moſt reaſonable diſtinction. A due circumſpection in the choice of the perſons whom they truſt; caution in limiting the extent of that truſt; or the requiring of ſufficient ſecurity for the faithful diſcharge of it, will commonly guard men from injuries of this deſcription: and the law will not interpoſe its ſanctions, to protect negligence and credulity, or to ſupply the place of domeſtic care and prudence. To be convinced that the law proceeds entirely upon this conſideration, we have only to obſerve, that, where the confidence is unavoidable, where no practicable vigilance could watch the offender, as in the caſe of theft committed by a ſervant in the ſhop or dwelling-houſe of his maſter, or upon property to which he muſt neceſſarily have acceſs, the ſentence of the law is not leſs ſevere, and its execution commonly more certain and rigorous, than if no truſt at all had intervened.

It is in purſuance of the ſame principle, which pervades indeed the whole ſyſtem of penal juriſprudence, that the facility, with which any ſpecies of crimes is perpetrated, has been generally deemed a reaſon for aggravating the puniſhment. Thus, ſheep-ſtealing, horſe ſtealing, the ſtealing of cloth from tenters, or bleaching grounds, by our laws, ſubject the offenders to ſentence of death: not that theſe crimes are in their nature more heinous, than many ſimple felonies which are puniſhed by impriſonment or tranſportation, but becauſe the property being more expoſed, requires the terror of capital puniſhment to protect it. This ſeverity would be abſurd and unjuſt, if the guilt of the offender were the immediate cauſe and meaſure of the puniſhment; but is a conſiſtent and regular conſequence of the ſuppoſition, that the right of puniſhment reſults from the neceſſity of preventing the crime: for if this be the end propoſed, the ſeverity of the puniſhment muſt be increaſed in proportion to the expediency and the difficulty of attaining this end; that is, in a proportion compounded of the miſchief of the crime, and of the eaſe with which it is executed. The difficulty of diſcovery is a circumſtance to be included in the ſame conſideration. It conſtitutes indeed, with reſpect to the crime, the facility of which we ſpeak. By how much, therefore, the detection of an offender is more rare and uncertain, by ſo much the more ſevere muſt be the puniſhment when he is detected. Thus the writing of incendiary letters, though in itſelf a pernicious and alarming injury, calls for a more condign and exemplary puniſhment, by the very obſcurity with which the crime is committed.

From the juſtice of God we are taught to look for a gradation of puniſhment, exactly proportioned to the guilt of the offender; when, therefore, in aſſigning the degrees of human puniſhment, we introduce conſiderations diſtinct from that guilt, and a proportion ſo varied by external circumſtances, that equal crimes frequently undergo unequal puniſhments, or the leſs crime the greater; it is natural to demand the reaſon why a different meaſure of puniſhment ſhould be expected from God, and obſerved by man; why that rule, which befits the abſolute and perfect juſtice of the Deity, ſhould not be the rule which ought to be purſued and imitated by human laws? The ſolution of this difficulty muſt be ſought for in thoſe peculiar attributes of the divine nature, which diſtinguiſh the diſpenſations of ſupreme wiſdom from the proceedings of human judicature. A Being, whoſe knowledge penetrates every concealment; from the operation of whoſe will no art or flight can eſcape; and in whoſe hands puniſhment is ſure;—ſuch a Being may conduct the moral government of his creation, in the beſt and wiſeſt manner, by pronouncing a law, that every crime ſhall finally receive a puniſhment proportioned to the guilt which it contains, abſtracted from any foreign conſideration whatever: and may teſtify his veracity to the ſpectators of his judgments, by carrying this law into ſtrict execution. But when the care of the public ſafety is intruſted to men, whoſe authority over their fellow creatures is limited by defects of power and knowledge; from whoſe utmoſt vigilance and ſagacity the greateſt offenders often lie hid; whoſe wiſeſt precautions and ſpeedieſt purſuit may be eluded by artifice or concealment;—a different neceſſity, a new rule of proceeding reſults from the very imperfection of their faculties. In their hands, the uncertainty of puniſhment muſt be compenſated by the ſeverity. The eaſe with which crimes are committed or concealed, muſt be counteracted by additional penalties and increaſed terrors. The very end for which human government is eſtabliſhed, requires that its regulations be adapted to the ſuppreſſion of crimes. This end, whatever it may do in the plans of infinite wiſdom, does not, in the deſignation of temporal penalties, always coincide with the proportionate puniſhment of guilt.

There are two methods of adminiſtering penal juſtice.

The firſt method aſſigns capital puniſhments to few offences, and inflicts it invariably.

The ſecond method aſſigns capital puniſhments to many kinds of offences, but inflicts it only upon a few examples of each kind.

The latter of which two methods has been long adopted in this country, where, of thoſe who receive ſentence of death, ſcarcely one in ten is executed. And the preference of this to the former method ſeems to be founded in the conſideration, that the ſelection of proper objects for capital puniſhment principally depends upon circumſtances, which, however eaſy to perceive in each particular caſe after the crime is committed, it is impoſſible to enumerate or define beforehand; or to aſcertain, however, with that exactneſs, which is requiſite in legal deſcriptions. Hence, although it be neceſſary to fix, by preciſe rules of law, the boundary on one ſide, that is, the limit to which the puniſhment may be extended, and alſo that nothing leſs than the authority of the whole legiſlature be ſuffered to determine that boundary and aſſign theſe rules; yet the mitigation of puniſhment, the exerciſe of lenity, may, without danger, be intruſted to the executive magiſtrate, whoſe diſcretion will operate upon thoſe numerous, unforeſeen, mutable and indefinite circumſtances, both of the crime and the criminal, which conſtitute or qualify the malignity of each offence. Without the power of relaxation lodged in a living authority, either ſome offenders would eſcape capital puniſhment, whom the public ſafety required to ſuffer; or ſome would undergo this puniſhment, where it was neither deſerved nor neceſſary. For if judgment of death were reſerved for one or two ſpecies of crimes only, which would probably be the caſe, if that judgment was intended to be executed without exception, crimes might occur of the moſt dangerous example, and accompanied with circumſtances of heinous aggravation, which did not fall within *any* deſcription of offences that the laws had made capital, and which, conſequently, could not receive the puniſhment their own malignity and the public ſafety required. What is worſe, it would be known, beforehand, that ſuch crimes might be committed without danger to the offender's life. On the other hand, if, to reach theſe poſſible caſes, the whole claſs of offences to which they belong be ſubjected to pains of death, and no power of remitting this ſeverity remain any where, the execution of the laws will become more ſanguinary than the public compaſſion would endure, or than is neceſſary to the general ſecurity.

The law of England is conſtructed upon a different and a better policy. By the number of ſtatutes creating capital offences, it ſweeps into the net every crime, which under any poſſible circumſtances may merit the puniſhment of death: but, when the execution of this ſentence comes to be deliberated upon, a ſmall proportion of each claſs are ſingled out, the general character, or the peculiar aggravations of whoſe crimes, render them fit examples of public juſtice. By this expedient, few actually ſuffer death, whilſt the dread and danger of it hang over the crimes of many. The tenderneſs of the law cannot be taken advantage of. The life of the ſubject is ſpared, as far as the neceſſity of reſtraint and intimidation permits; yet no one will adventure upon the commiſſion of any enormous crime, from a knowledge that the laws have not provided for its puniſhment. The wiſdom and humanity of this deſign furniſh a juſt excuſe for the multiplicity of capital offences, which the laws of England are accuſed of creating beyond thoſe of other countries. The charge of cruelty is anſwered by obſerving, that theſe laws were never meant to be carried into indiſcriminate execution; that the legiſlature, when it eſtabliſhes its laſt and higheſt ſanctions, truſts to the benignity of the crown to relax their ſeverity, as often as circumſtances appear to palliate the offence, or even as often as thoſe circumſtances of aggravation are wanting, which rendered this rigorous interpoſition neceſſary. Upon this plan it is enough to vindicate the lenity of the laws, that *ſome* inſtances are to be found in each claſs of capital crimes, which require the reſtraint of capital puniſhment; and that this reſtraint could not be applied without ſubjecting the whole claſs to the ſame condemnation.

There is, however, one ſpecies of crimes, the making of which capital can hardly, I think, be defended, even upon the comprehenſive principle juſt now ſtated; I mean that of privately ſtealing from the perſon. As every degree of force is excluded by the deſcription of the crime, it will be difficult to aſſign an example, where either the amount or circumſtances of the theft, place it upon a level with thoſe dangerous attempts, to which the puniſhment of death ſhould be confined. It will be ſtill more difficult to ſhew, that, without groſs and culpable negligence on the part of the ſufferer, ſuch examples can ever become ſo frequent, as to make it neceſſary, to conſtitute a claſs of capital offences, of very wide and large extent.

The prerogative of pardon is properly reſerved to the chief magiſtrate. The power of ſuſpending the laws is a privilege of too high a nature to be committed to many hands, or to thoſe of any inferior officer in the ſtate. The king alſo can beſt collect the advice by which his reſolutions ſhould be governed; and is at the ſame time removed at the greateſt diſtance from the influence of private motives. But let this power be depoſited where it will, the exerciſe of it ought to be regarded, not as a favour to be yielded to ſolicitation, granted to friendſhip, or, leaſt of all, to be made ſubſervient to the conciliating or gratifying of political attachments, but as a judicial act; as a deliberation, to be conducted with the ſame character of impartiality, with the ſame exact and diligent attention to the proper merits and circumſtances of the caſe, as that which the judge upon the bench was expected to maintain and ſhow in the trial of the priſoner's guilt. The queſtions, whether the priſoner be guilty, and whether, being guilty, he ought to be executed, are equally queſtions of public juſtice. The adjudication of the latter queſtion is as much a function of magiſtracy as the trial of the former. The public welfare is intereſted in both. The conviction of an offender ſhould depend upon nothing but the proof of his guilt, nor the execution of the ſentence upon any thing beſide the quality and circumſtances of his crime. It is neceſſary to the good order of ſociety, and to the reputation and authority of government, that this be known and believed to be the caſe in each part of the proceeding. Which reflections ſhow, that the admiſſion of extrinſic or oblique conſiderations, in diſpenſing the power of pardon, is a crime in the authors and adviſers of ſuch unmerited partiality, of the ſame nature with that of corruption in a judge.

Aggravations, which ought to guide the magiſtrate in the ſelection of objects of condign puniſhment, are principally theſe three—repetition, cruelty, combination.—The two firſt, it is manifeſt, add to every reaſon upon which the juſtice or the neceſſity of rigorous meaſures can be founded; and, with reſpect to the laſt circumſtance, it may be obſerved, that when thieves and robbers are once collected into gangs;

their violence becomes more formidable, the confederates more deſperate, and the difficulty of defending the public againſt their depredations much greater, than in the caſe of ſolitary adventurers. Which ſeveral conſiderations compoſe a diſtinction, that is properly adverted to, in deciding upon the fate of convicted malefactors.

In crimes, however, which are perpetrated by a multitude, or by a gang, it is proper to ſeparate, in the puniſhment, the ringleader from his followers, the principal from his accomplices, and even the perſon who ſtruck the blow, broke the lock, or firſt entered the houſe, from thoſe who joined him in the felony; not ſo much on account of any diſtinction in the guilt of the offenders, as for the ſake of caſting an obſtacle in the way of ſuch confederacies, by rendering it difficult for the confederates to ſettle who ſhall begin the attack, or to find a man amongſt their number willing to expoſe himſelf to greater danger than his aſſociates. This is another inſtance in which the puniſhment, which expediency directs, does not purſue the exact proportion of the crime.

Injuries effected by terror and violence, are thoſe which it is the firſt and chief concern of legal government to repreſs; becauſe, their extent is unlimited; becauſe, no private precaution can protect the ſubject againſt them; becauſe, they endanger life and ſafety, as well as property; and laſtly, becauſe they render the condition of ſociety wretched, by a ſenſe of perſonal inſecurity. Theſe reaſons do not apply to frauds, which circumſpection may prevent; which muſt wait for opportunity; which can proceed only to certain limits; and by the apprehenſion of which, although the buſineſs of life be incommoded, life itſelf is not made miſerable. The appearance of this diſtinction has led ſome humane writers to expreſs a wiſh, that capital puniſhments might be confined to crimes of violence.

In eſtimating the comparative malignancy of crimes of violence, regard is to be had, not only to the proper and intended miſchief of the crime, but to the fright occaſioned by the attack, to the general alarm excited by it in others, and to the conſequences which may attend future attempts of the ſame kind. Thus in affixing the puniſhment of burglary, or of breaking into dwelling-houſes by night, we are to conſider not only the peril to which the moſt valuable property is expoſed by this crime, and which may be called the direct miſchief of it, but the danger alſo of murder in caſe of reſiſtance, or for the ſake of preventing diſcovery, and the univerſal dread with which the ſilent and defenceleſs hours of reſt and ſleep muſt be diſturbed, were attempts of this ſort to become frequent; and which dread alone, even without the miſchief which is the object of it, is not only a public evil, but almoſt of all evils the moſt inſupportable. Theſe circumſtances place a difference between the breaking into a dwelling-houſe by day, and by night; which difference obtains in the puniſhment of the offence by the law of Moſes, and is probably to be found in the judicial codes of moſt countries, from the earlieſt ages to the preſent.

Of frauds, or of injuries which are effected without force, the moſt noxious kinds are forgeries, counterfeiting or diminiſhing of the coin, and the ſtealing of letters in the courſe of their conveyance; inaſmuch as theſe practices tend to deprive the public of accommodations, which not only improve the conveniencies of ſocial life, but are eſſential to the proſperity, and even the exiſtence of commerce. Of theſe crimes it may be ſaid, that although they ſeem to affect property alone, the miſchief of their operation does not terminate there. For let it be ſuppoſed that the remiſſneſs or lenity of the laws ſhould, in any country, ſuffer offences of this ſort to grow into ſuch a frequency, as to render the uſe of money, the circulation of bills, or the public conveyance of letters no longer ſafe or practicable; what would follow, but that every ſpecies of trade and of activity muſt decline under theſe diſcouragements; the ſources of ſubſiſtence fail, by which the inhabitants of the country are ſupported; the country itſelf, where the intercourſe of civil life was ſo endangered and defective, be deſerted; and that, beſide the diſtreſs and poverty, which the loſs of employment would produce to the induſtrious and valuable part of the exiſting community, a rapid depopulation muſt take place, each generation becoming leſs numerous than the laſt, till ſolitude and barrenneſs overſpread the land; until a deſolation ſimilar to what obtains in many countries of Aſia, which were once the moſt civilized and frequented parts of the world, ſucceed in the place of crowded cities, of cultivated fields, of happy and well-peopled regions? When we carry forwards, therefore, our views to the more diſtant, but not leſs certain conſequences of theſe crimes, we perceive that, though no living creature be deſtroyed by them, yet human life is diminiſhed; that an offence, the particular conſequence of which deprives only an individual of a ſmall portion of his property, and which even in its general tendency ſeems to do nothing more than obſtruct the enjoyment of certain public conveniencies, may nevertheleſs, by its ultimate effects, conclude in the laying waſte of human exiſtence. This obſervation will enable thoſe who regard the divine rule of "life for life, and blood for blood," as the only authorized and juſtifiable meaſure of capital puniſhment, to perceive, with reſpect to the effects and quality of the actions, a greater reſemblance than they ſuppoſe to exiſt, between certain atrocious frauds, and thoſe crimes which attack perſonal ſafety.

In the caſe of forgeries there appears a ſubſtantial difference between the forging of bills of exchange, or of ſecurities which are circulated, and of which the circulation and currency are found to ſerve and facilitate valuable purpoſes of commerce, and the forging of bonds, leaſes, mortgages, or of inſtruments which are not commonly transferred from one hand to another; becauſe, in the former caſe credit is neceſſarily given to the ſignature, and, without that credit, the negociation of ſuch property could not be carried on, nor the public utility ſought from it be attained; in the other caſe, all poſſibility of deceit might be precluded, by a direct communication between the parties, or by due care in the choice of their agents, with little interruption to buſineſs, and without deſtroying, or much encumbering, the uſes for which theſe inſtruments are calculated. This diſtinction, I apprehend to be not only real, but preciſe enough to afford a line of diviſion between forgeries, which, as the law now ſtands, are almoſt univerſally capital, and puniſhed with undiſtinguiſhing ſeverity.

Perjury is another crime of the ſame claſs and magnitude. And, when we conſider what reliance is neceſſarily placed upon oaths; that all judicial deciſions proceed upon teſtimony; that conſequently there is not a right, that a man poſſeſſes, of which falſe witneſſes may not deprive him; that reputation, property, and life itſelf lie open to the attempts of perjury; that it may often be committed without a poſſibility of contradiction or diſcovery; that the ſucceſs and prevalency of this vice tend to introduce the moſt grievous and fatal injuſtice into the adminiſtration of human affairs, or ſuch a diſtruſt of teſtimony as muſt create univerſal embarraſſment and confuſion: when we reflect upon theſe miſchiefs, we ſhall be brought, probably, to agree with the opinion of thoſe, who contend that perjury, in its puniſhment, eſpecially that which is attempted in ſolemn evidence, and in the face of a court of juſtice, ſhould be placed upon a level with the moſt flagitious frauds.

The obtaining of money by ſecret threats, whether we regard the difficulty with which the crime is traced out, the odious imputations to which it may lead, or the profligate conſpiracies that are ſometimes formed to carry it into execution, deſerves to be reckoned amongſt the worſt ſpecies of robbery.

The frequency of capital executions in this country, owes its neceſſity to three cauſes—much liberty, great cities, and the want of a puniſhment, ſhort of death, poſſeſſing a ſufficient degree of terror. And if the taking away of the life of malefactors be more rare in other countries than in ours, the reaſon will be found in ſome difference in theſe articles. The liberties of a free people, and ſtill more the jealouſy with which theſe liberties are watched, and by which they are preſerved, permit not thoſe precautions and reſtraints, that inſpection, ſcrutiny, and control, which are exerciſed with ſucceſs in arbitrary governments. For example, neither the ſpirit of the laws, nor of the people, will ſuffer the detention or confinement of ſuſpected perſons, without proofs of their guilt, which it is often impoſſible to obtain; nor will they allow that maſters of families be obliged to record and render up a deſcription of the ſtrangers or inmates whom they entertain; nor that an account be demanded, at the pleaſure of the magiſtrate, of each man's time, employment and means of ſubſiſtence; nor ſecurities to be required when theſe accounts appear unſatisfactory or dubious; nor men to be apprehended upon the mere ſuggeſtion of idleneſs or vagrancy; nor to be confined to certain diſtricts; nor the inhabitants of each diſtrict to be made reſponſible for one another's behaviour; nor paſſports to be exacted from all perſons entering or leaving the kingdom: leaſt of all will they tolerate the appearance of an armed force, or of military law; or ſuffer the ſtreets and public roads to be guarded and patrolled by ſoldiers; or, laſtly, intruſt the police with ſuch diſcretionary powers, as may make ſure of the guilty, however they involve the innocent. Theſe expedients, although arbitrary and rigorous, are many of them effectual; and in proportion as they render the commiſſion or concealment of crimes more difficult, they ſubtract from the neceſſity of ſevere puniſhment. *Great cities* multiply crimes by preſenting eaſier opportunities and more incentives to libertiniſm, which in low life is commonly the introductory ſtage to other enormities; by collecting thieves and robbers into the ſame neighbourhood, which enables them to form communications and confederacies, that increaſe their art and courage, as well as ſtrength and wickedneſs; but principally by the refuge they afford to villany, in the means of concealment, and of ſubſiſting in ſecrecy, which crowded towns ſupply to men of every deſcription. Theſe temptations and facilities can only be counteracted by adding to the number of capital puniſhments. But a *third* cauſe, which increaſes the frequency of capital executions in England, is a defect of the laws in not being provided with any other puniſhment than that of death, ſufficiently terrible to keep offenders in awe. Tranſportation, which is the ſentence ſecond in the order of ſeverity, appears to me to anſwer the purpoſe of example very imperfectly; not only becauſe exile is in reality a ſlight puniſhment to thoſe, who have neither property, nor friends, nor reputation, nor regular means of ſubſiſtence at home; and becauſe their ſituation becomes little worſe by their crime, than it was before they committed it: but becauſe the puniſhment, whatever it be, is unobſerved and unknown. A tranſported convict may ſuffer under his ſentence, but his ſufferings are removed from the view of his countrymen: his miſery is unſeen; his condition ſtrikes no terror into the minds of thoſe, for whoſe warning and admonition it was intended. This chaſm in the ſcale of puniſhment produces alſo two farther imperfections in the adminiſtration of penal juſtice: the firſt is, that the ſame puniſhment is extended to crimes of very different character and malignancy; the ſecond, that puniſhments ſeparated by a great interval, are aſſigned to crimes hardly diſtinguiſhable in their guilt and miſchief.

The end of puniſhment is two-fold, *amendment* and *example.* In the firſt of theſe, the *reformation* of criminals, little has ever been effected, and little I fear is practicable. From every ſpecies of puniſhment that has hitherto been deviſed, from impriſonment and exile, from pain and infamy, malefactors return more hardened in their crimes and more inſtructed. If there be any thing that ſhakes the ſoul of a confirmed villain, it is the expectation of approaching death. The horrors of this ſituation may cauſe ſuch a wrench in the mental organs, as to give them a holding turn: and I think it probable, that many of thoſe who are executed, would, if they were delivered at the point of death, retain ſuch a remembrance of their ſenſations, as might preſerve them, unleſs urged by extreme want, from relapſing into their former crimes. But this is an experiment that from its nature cannot be repeated often.

Of the *reforming* puniſhments which have not yet been tried, none promiſes ſo much ſucceſs as that of *ſolitary* impriſonment, or the confinement of criminals in ſeparate apartments. This improvement augments the terror of the puniſhment ; ſecludes the criminal from the ſociety of his fellow priſoners, in which ſociety the worſe are ſure to corrupt the better ; weans him from the knowledge of his companions, and from the love of that turbulent, precarious life, in which his vices had engaged him ; is calculated to raiſe up in him reflections on the folly of his choice, and to diſpoſe his mind to ſuch bitter and continued penitence, as may produce a laſting alteration in the principles of his conduct.

As averſion to labour is the cauſe, from which half of the vices of low life deduce their origin and continuance, puniſhments ought to be contrived with a view to the conquering of this diſpoſition. Two oppoſite expedients have been recommended for this purpoſe ; the one ſolitary confinement, with hard labour ; the other ſolitary confinement, with nothing to do. Both expedients ſeek the ſame end—to reconcile the idle to a life of induſtry. The former hopes to effect this by making labour habitual ; the latter by making idleneſs inſupportable : and the preference of one method to the other depends upon the queſtion, whether a man is more likely to betake himſelf, of his own accord, to work, who has been accuſtomed to employment, or who has been diſtreſſed by the want of it ? When jails are once provided for the *ſeparate* confinement of priſoners, which both propoſals require, the choice between them may ſoon be determined by experience. If labour be exacted, I would leave the whole, or a portion of the earnings to the priſoner's uſe, and I would debar him from any other proviſion or ſupply ; that his ſubſiſtence, however coarſe or penurious, may be proportioned to his diligence, and that he may taſte the advantage of induſtry together with the toil. I would go farther; I would meaſure the confinement, not by the duration of time, but by quantity of work, in order both to excite induſtry, and to render it more voluntary. But the principal difficulty remains ſtill; namely, how to diſpoſe of criminals after their enlargement. By a rule of life, which is perhaps too invariably and indiſcriminately adhered to, no one will receive a man or a woman out of jail, into any ſervice or employment whatever. This is the common misfortune of public puniſhments, that they preclude the offender from all honeſt means of future ſupport.* It ſeems incumbent upon the ſtate to ſecure a maintenance to thoſe who are willing to work for it; and yet it is abſolutely neceſſary to divide criminals as far aſunder from one another as poſſible. Whether male priſoners might not, after the term of their confinement was expired, be diſtributed in the country, detained within certain limits, and employed upon the public roads; and females be remitted to the overſeers of country pariſhes, to be there furniſhed with dwellings, and with the materials and implements of occupation;—whether by theſe, or by what other methods, it may be poſſible to effect the two purpoſes of *employment* and *diſperſion*, well merits the attention of all who are anxious to perfect the internal regulation of their country.

Torture is applied, either to obtain confeſſions of guilt, or to exaſperate or prolong the pains of death. No bodily puniſhment, however excruciating or long continued, receives the name of torture, unleſs it be deſigned to kill the criminal by a more lingering death, or to extort from him the diſcovery of ſome ſecret, which is ſuppoſed to lie concealed in his breaſt. *The queſtion by torture* appears to be equivocal in its effects; for, ſince extremity of pain, and not any conſciouſneſs of remorſe in the mind, produces thoſe effects, an innocent man may ſink under the torment, as well as he who is guilty. The latter has as much to fear from yielding as the former. The inſtant and almoſt irreſiſtible deſire of relief may draw from one ſufferer falſe accuſations of himſelf or others, as it may ſometimes extract the truth out of another. This ambiguity renders the uſe of torture, as a means of procuring information in criminal proceedings, liable to the riſk of grievous and irreparable injuſtice. For which reaſon, though recommended by ancient and general example, it has been properly exploded from the mild and cautious ſyſtem of penal juriſprudence eſtabliſhed in this country.

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* Until this inconvenience be remedied, ſmall offences had, perhaps, better go unpuniſhed; I do not mean that the laws ſhould exempt them from puniſhment, but that private perſons ſhould be tender in proſecuting them.

Barbarous ſpectacles of human agony are juſtly found fault with, as tending to harden and deprave the public feelings, and to deſtroy that ſympathy with which the ſufferings of our fellow creatures ought always to be ſeen; or, if no effect of this kind follow from them, they counteract in ſome meaſure their own deſign, by ſinking men's abhorrence of the crime in their commiſeration of the criminal. But if a mode of execution could be deviſed, which would augment the horror of the puniſhment, without offending or impairing the public ſenſibility by cruel or unſeemly exhibtions of death, it might add ſomething to the efficacy of the example; and by being reſerved for a few atrocious crimes, might alſo enlarge the ſcale of puniſhment; an addition to which ſeems wanting; for, as the matter remains at preſent, you hang a malefactor for a ſimple robbery, and can do no more to the villain who has poiſoned his father. Somewhat of the ſort we have been deſcribing was the propoſal not long ſince ſuggeſted, of caſting murderers into a den of wild beaſts, where they would periſh in a manner dreadful to the imagination, yet concealed from the view.

Infamous puniſhments are miſmanaged in this country, with reſpect both to the crimes and the criminals. In the firſt place, they ought to be confined to offences, which are held in undiſputed and univerſal deteſtation. To condemn to the pillory the author or editor of a libel againſt the ſtate, who has rendered himſelf the favourite of a party, if not of the people, by the very act for which he ſtands there, is to gratify the offender, and to expoſe the laws to mockery and inſult. In the ſecond place, the delinquents who receive this ſentence are, for the moſt part, ſuch as have long ceaſed either to value reputation, or to fear ſhame; of whoſe happineſs, and of whoſe enjoyments, character makes no part. Thus the low miniſters of libertiniſm, the keepers of bawdy or diſorderly houſes, are threatened in vain with a puniſhment that affects a ſenſe which they have not; that applies ſolely to the imagination, to the virtue and the pride of human nature. The pillory, or any other infamous diſtinction, might be employed rightly, and with effect, in the puniſhment of ſome offences of higher life, as of frauds and peculation in office; of colluſions and connivances, by which the public treaſury is defrauded; of breaches of truſt; of perjury, and ſubornation of perjury; of the clandeſtine and forbidden ſale of places; of flagrant abuſes of authority, or neglect of duty; and, laſtly, of corruption in the exerciſe of confidential or judicial offices. In all which, the more elevated was the ſtation of the criminal, the more ſignal and conſpicuous would be the triumph of juſtice.

The *certainty* of puniſhment is of more conſequence than the ſeverity. Criminals do not ſo much flatter themſelves with the lenity of the ſentence, as with the hope of eſcaping. They are not ſo apt to compare what they gain by the crime, with what they may ſuffer from the puniſhment, as to encourage themſelves with the chance of concealment or flight. For which reaſon a vigilant magiſtracy, an accurate police, a proper diſtribution of force and intelligence, together with due rewards for the diſcovery and apprehenſion of malefactors, and an undeviating impartiality in carrying the laws into execution, contribute more to the reſtraint and ſuppreſſion of crimes, than any violent exacerbations of puniſhment. And for the ſame reaſon, of all contrivances directed to this end, thoſe perhaps are moſt effectual which facilitate the conviction of criminals. The offence of counterfeiting the coin could not be checked by all the terrors and the utmoſt ſeverity of the law, whilſt the act of coining was neceſſary to be eſtabliſhed by ſpecific proof. The ſtatute which made the poſſeſſion of the implements of coining capital, that is, which conſtituted that poſſeſſion complete evidence of the offender's guilt, was the firſt thing that gave force and efficacy to the denunciations of law upon this ſubject. The ſtatute of JAMES the Firſt, relative to the murder of baſtard children, which ordains that the concealment of the birth ſhould be deemed inconteſtable proof of the charge, though a harſh law, was, in like manner with the former, well calculated to put a ſtop to the crime.

It is upon the principle of this obſervation, that I apprehend much harm to have been done to the community, by the overſtrained ſcrupulouſneſs, or weak timidity of juries, which demands often ſuch proof of a priſoner's guilt, as the nature and ſecrecy of his crime ſcarce poſſibly admit of; and which holds it the part of a *ſafe* conſcience not to condemn any man, whilſt there exiſts the minuteſt poſſibility of his innocence. Any ſtory they may happen to have heard or read, whether real or feigned, in which courts of juſtice have been miſled by preſumptions of guilt, is enough, in their minds, to found an acquittal upon, where poſitive proof is wanting. I do not mean that juries ſhould indulge conjectures, ſhould magnify ſuſpicions into proofs, or even that they ſhould weigh probabilities in *gold ſcales;* but when the preponderation of evidence is ſo manifeſt, as to perſuade every private underſtanding of the priſoner's guilt; when it furniſhes that degree of credibility, upon which men decide and act in all other doubts, and which experience hath ſhown that they may decide and act upon with ſufficient ſafety: to reject ſuch proof, from an inſinuation of uncertainty that belongs to all human affairs, and from a general dread leſt the charge of innocent blood ſhould lie at their doors, is a conduct which, however natural to a mind ſtudious to its own quiet, is authorized by no conſiderations of rectitude or utility. It counteracts the care, and damps the activity of government: it holds out public encouragement to villany, by confeſſing the impoſſibility of bringing villains to juſtice; and that ſpecies of encouragement, which, as hath been juſt now obſerved, the minds of ſuch men are moſt apt to entertain and dwell upon.

There are two popular maxims, which ſeem to have a conſiderable influence in producing the injudicious acquittals of which we complain. One is, "that circumſtantial evidence falls ſhort of poſitive proof." This aſſertion, in the unqualified ſenſe in which it is applied, is not true. A concurrence of well-authenticated circumſtances compoſes a ſtronger ground of aſſurance than poſitive teſtimony, unconfirmed by circumſtances, uſually affords. Circumſtances cannot lie. The concluſion alſo which reſults from them, though deduced by only probable inference, is commonly more to be relied upon than the veracity of an unſupported ſolitary witneſs. The danger of being deceived is leſs, the actual inſtances of deception are fewer, in the one caſe than the other. What is called poſitive proof in criminal matters, as where a man ſwears to the perſon of the priſoner, and that he actually ſaw him commit the crime with which he is charged, may be founded in the miſtake or perjury of a ſingle witneſs. Such miſtakes, and ſuch perjuries are not without many examples. Whereas, to impoſe upon a court of juſtice, a chain of *circumſtantial* evidence in ſupport of a fabricated accuſation, requires ſuch a number of falſe witneſſes as ſeldom meet together; an union alſo of ſkill and wickedneſs which is ſtill more rare; and after all, this ſpecies of proof lies much more open to diſcuſſion, and is more likely, if falſe, to be contradicted, or to betray itſelf by ſome unforeſeen inconſiſtency, than that direct proof, which, being confined within the knowledge of a ſingle perſon, which appealing to, or ſtanding connected with, no external or collateral circumſtances, is incapable, by its very ſimplicity, of being confronted with oppoſite probabilities.

The other maxim, which deſerves a ſimilar examination, is this, "that it is better that ten guilty perſons eſcape, than that one innocent man ſhould ſuffer." If by ſaying it is *better*, be meant that it is more for the public advantage, the propoſition, I think, cannot be maintained. The ſecurity of civil life, which is eſſential to the value and the enjoyment of every bleſſing it contains, and the interruption of which is followed by univerſal miſery and confuſion, is protected chiefly by the dread of puniſhment. The misfortune of an individual, for ſuch may the ſufferings, or even the death of an innocent perſon be called, when they are occaſioned by no evil intention, cannot be placed in competition with this object. I do not contend that the life or ſafety of the meaneſt ſubject ought, in any caſe, to be knowingly ſacrificed. No principle of judicature, no end of puniſhment can ever require *that.* But when certain rules of adjudication muſt be purſued, when certain degrees of credibility muſt be accepted, in order to reach the crimes with which the public are infeſted; courts of juſtice ſhould not be deterred from the application of theſe rules by *every* ſuſpicion of danger, or by the mere poſſibility of confounding the innocent with the guilty. They ought rather to reflect, that he who falls by a miſtaken ſentence, may be conſidered as falling for his country: whilſt he ſuffers under the operation of thoſe rules, by the general effect and tendency of which the welfare of the community is maintained and upheld.

Chapter X.

OF RELIGIOUS ESTABLISHMENTS, AND OF TOLERATION.

"A RELIGIOUS eſtabliſhment is no part of Chriſtianity, it is only the means of inculcating it." Amongſt the Jews, the rights and offices, the order, family, and ſucceſſion of the prieſthood were marked out by the authority which declared the law itſelf. Theſe, therefore, were *parts* of the Jewiſh religion, as well as the means of tranſmitting it. Not ſo with the new inſtitution. It cannot be proved that any form of church government was laid down in the Chriſtian, as it had been in the Jewiſh ſcriptures, with a view of fixing a conſtitution for ſucceeding ages; and which conſtitution, conſequently, the diſciples of Chriſtianity would, every where, and at all times, by the very law of their religion, be obliged to adopt. Certainly no command for this purpoſe was delivered by Chriſt himſelf; and if it be ſhown that the apoſtles ordained biſhops and preſbyters amongſt their firſt converts, it muſt be remembered that deacons alſo and deaconeſſes were appointed by them, with functions very diſſimilar to any which obtain in the church at preſent. The truth ſeems to have been, that ſuch offices were at firſt erected in the Chriſtian church, as the good order, the inſtruction, and the exigencies of the ſociety at that time required, without any intention, at leaſt without any declared deſign, of regulating the appointment, authority, or the diſtinction of Chriſtian miniſters under future circumſtances. This reſerve, if we may ſo call it, in the Chriſtian Legiſlator, is ſufficiently accounted for by two conſiderations: Firſt, that no preciſe conſtitution could be framed, which would ſuit with the condition of Chriſtianity in its primitive ſtate, and with that which it was to aſſume when it ſhould be advanced into a national religion. Secondly, that a particular deſignation of office or authority amongſt the miniſters of the new religion might have ſo interfered with the arrangements of civil policy, as to have formed, in ſome countries, a conſiderable obſtacle to the progreſs and reception of the religion itſelf.

The authority, therefore, of a church eſtabliſhment is founded in its utility: and whenever, upon this principle, we deliberate concerning the form, propriety, or comparative excellency of different eſtabliſhments, the ſingle view, under which we ought to conſider any of them, is that of "a ſcheme of inſtruction;" the ſingle end we ought to propoſe by them is, "the preſervation and communication of religious knowledge." Every other idea, and every other end that hath been mixed with this, as the making of the church an engine, or even *an ally*, of the ſtate; converting it into the means of ſtrengthening or diffuſing influence; or regarding it as a ſupport of regal in oppoſition to popular forms of government, have ſerved only to debaſe the inſtitution, and to introduce into it numerous corruptions and abuſes.

The notion of a religious eſtabliſhment comprehends three things; a clergy, or an order of men ſecluded from other profeſſions, to attend upon the offices of religion; a legal proviſion for the maintenance of the clergy; and the confining of that proviſion to the teachers of a particular ſect of Chriſtianity. If any one of theſe three things be wanting; if there be no clergy, as amongſt the Quakers; or, if the clergy have no other proviſion than what they derive from the voluntary contribution of their hearers; or, if the proviſion which the laws aſſign to the ſupport of religion be extended to various ſects and denominations of Chriſtians, there exiſts no national religion, or eſtabliſhed church, according to the ſenſe which theſe terms are uſually made to convey. He, therefore, who would defend eccleſiaſtical eſtabliſhments, muſt ſhow the ſeparate utility of theſe three eſſential parts of their conſtitution.

1. The queſtion firſt in order upon the ſubject, as well as the moſt fundamental in its importance, is, whether the knowledge and profeſſion of Chriſtianity can be maintained in a country, without a claſs of men ſet apart by public authority to the ſtudy and teaching of religion, and to the conducting of public worſhip; and for theſe purpoſes ſecluded from other employments. I add this laſt circumſtance, becauſe in it conſiſts, as I take it, the ſubſtance of the controverſy. Now it muſt be remembered that Chriſtianity is an hiſtorical religion, founded in facts which are related to have paſſed, upon diſcourſes which were held, and letters which were written, in a remote age and diſtant country of the world, as well as under a ſtate of life and manners, and during the prevalency of opinions, cuſtoms and inſtitutions,

very unlike any which are found amongſt mankind at preſent. Moreover, this religion, having been firſt publiſhed in the country of Judea, and being built upon the more ancient religion of the Jews, is neceſſarily and intimately connected with the ſacred writings, with the hiſtory and polity of that ſingular people: to which muſt be added, that the records of both revelations are preſerved in languages, which have long ceaſed to be ſpoken in any part of the world. Books which come down to us from times ſo remote, and under ſo many cauſes of unavoidable obſcurity, cannot, it is evident, be underſtood without ſtudy and preparation. The languages muſt be learnt. The various writings which theſe volumes contain muſt be carefully compared with one another, and with themſelves. What remains of contemporary authors, or of authors connected with the age, the country, or the ſubject of our ſcriptures, muſt be peruſed and conſulted, in order to interpret doubtful forms of ſpeech, and to explain alluſions which refer to objects or uſages that no longer exiſt. Above all, the modes of expreſſion, the habits of reaſoning and argumentation, which were then in uſe, and to which the diſcourſes even of inſpired teachers were neceſſarily adapted, muſt be ſufficiently known, and can only be known at all, by a due acquaintance with ancient literature. And, laſtly, to eſtabliſh the genuineneſs and integrity of the canonical ſcriptures themſelves, a ſeries of teſtimony, recognizing the notoriety and reception of theſe books, muſt be deduced from times near to thoſe of their firſt publication, down the ſucceſſion of ages through which they have been tranſmitted to us. The qualifications neceſſary for ſuch reſearches demand, it is confeſſed, a degree of leiſure, and a kind of education, inconſiſtent with the exerciſe of any other profeſſion; but how few are there amongſt the clergy, from whom any thing of this ſort can be expected! How ſmall a proportion of their number, who ſeem likely either to augment the fund of ſacred literature, or even to collect what is already known!—To this objection it may be replied, that we ſow many ſeeds to raiſe one flower. In order to produce a *few* capable of improving and continuing the ſtock of Chriſtian erudition, leiſure and opportunity muſt be afforded to great numbers. Original knowledge of this kind can never be univerſal; but it is of the utmoſt importance, and it is enough, that there be, at all times, found *ſome* qualified for ſuch inquiries, and in whoſe concurring and independent concluſions upon each ſubject, the reſt of the Chriſtian community may ſafely confide: whereas, without an order of clergy educated for the purpoſe, and led to the proſecution of theſe ſtudies by the habits, the leiſure, and the object of their vocation, it may well be queſtioned whether the learning itſelf would not have been loſt, by which the records of our faith are interpreted and defended. We contend, therefore, that an order of clergy is neceſſary to perpetuate the evidences of revelation, and to interpret the obſcurities of theſe ancient writings, in which the religion is contained. But beſide this, which forms, no doubt, one deſign of their inſtitution, the more ordinary offices of public teaching, and of conducting public worſhip, call for qualifications not uſually to be met with amidſt the employments of civil life. It has been acknowledged by ſome, who cannot be ſuſpected of making unneceſſary conceſſions in favour of eſtabliſhments, "to be barely *poſſible* that a perſon who was never educated for the office ſhould acquit himſelf with decency as a public teacher of religion." And that ſurely muſt be a very defective policy, which truſts to *poſſibilities* for ſucceſs, when proviſion is to be made for regular and general inſtruction. Little objection to this argument can be drawn from the example of the Quakers, who, it may be ſaid, furniſh an experimental proof that the worſhip and profeſſion of Chriſtianity may be upheld, without a ſeparate clergy. Theſe ſectaries every where ſubſiſt in conjunction with a regular eſtabliſhment. They have acceſs to the writings, they profit by the labours of the clergy in common with other Chriſtians. They participate in that general diffuſion of religious knowledge, which the conſtant teaching of a more regular miniſtry keeps up in the country: with ſuch aids, and under ſuch circumſtances, the defects of a plan may not be much felt, although the plan itſelf be altogether unfit for general imitation.

2. If then an order of clergy be neceſſary, if it be neceſſary alſo to ſeclude them from the employments and profits of other profeſſions; it is evident they ought to be enabled to derive a maintenance from their own. Now this maintenance muſt either depend upon the voluntary contributions of their hearers, or ariſe from revenues aſſigned by authority of law. To the ſcheme of voluntary contribution there exiſts this inſurmountable objection, that few would ultimately contribute any thing at all. However the zeal of a ſect, or the novelty of a change, might ſupport ſuch an experiment for a while, no reliance could be placed upon it as a general and permanent proviſion. It is at all times a bad conſtitution, which preſents temptations of intereſt in oppoſition to the duties of religion; or which makes the offices of religion expenſive to thoſe who attend upon them; or which allows pretences of conſcience to be an excuſe for not ſharing in a public burthen. If, by declining to frequent religious aſſemblies, men could ſave their money, at the ſame time that they indulged their indolence, and their diſinclination to exerciſes of ſerioufneſs and reflection; or if, by diſſenting from the national religion, they could be excuſed from contributing to the ſupport of the miniſters of religion, it is to be feared that many would take advantage of the option which was thus imprudently left open to them, and that this liberty might finally operate to the decay of virtue, and an irrecoverable forgetfulneſs of all religion in the country. Is there not too much reaſon to fear, that, if it were referred to the diſcretion of each neighbourhood, whether they would maintain amongſt them a teacher of religion or not, many diſtricts would remain unprovided with any; that, with the difficulties which encumber every meaſure, requiring the co-operation of numbers, and where each individual of the number has an intereſt ſecretly pleading againſt the ſuc-

ceſs of the meaſure itſelf, aſſociations for the ſupport of Chriſtian worſhip and inſtruction would neither be numerous nor long continued ? The devout and pious might lament in vain the want or the diſtance of a religious aſſembly : they could not form or maintain one, without the concurrence of neighbours, who felt neither their zeal nor their liberality.

From the difficulty with which congregations would be eſtabliſhed and upheld upon the *voluntary* plan, let us carry our thoughts to the condition of thoſe who are to officiate in them. Preaching, in time, would become a mode of begging. With what ſincerity, or with what dignity, can a preacher diſpenſe the truths of Chriſtianity, whoſe thoughts are perpetually ſolicited to the reflection how he may increaſe his ſubſcription ? His eloquence, if he poſſeſs any, reſembles rather the exhibition of a player who is computing the profits of his theatre, than the ſimplicity of a man, who, feeling himſelf the awful expectations of religion, is ſeeking to bring others to ſuch a ſenſe and underſtanding of their duty as may ſave their ſouls. Moreover, a little experience of the diſpoſition of the common people will in every country inform us, that it is one thing to edify them in Chriſtian knowledge, and another to gratify their taſte for vehement impaſſioned oratory ; that he, not only whoſe ſucceſs, but whoſe ſubſiſtence depends upon collecting and pleaſing a crowd, muſt reſort to other arts than the acquirement and communication of ſober and profitable inſtruction. For a preacher to be thus at the mercy of his audience, to be obliged to adapt his doctrines to the pleaſure of a capricious multitude, to be continually affecting a ſtyle and manner neither natural to him, nor agreeable to his judgment, to live in conſtant bondage to tyrannical and inſolent directors, are circumſtances ſo mortifying, not only to the pride of the human heart, but to the virtuous love of independency, that they are rarely ſubmitted to without a ſacrifice of principle, and a depravation of character—at leaſt it may be pronounced, that a miniſtry ſo degraded would ſoon fall into the loweſt hands ; for it would be found impoſſible to engage men of worth and ability in ſo precarious and humiliating a profeſſion.

If in deference, then, to theſe reaſons, it be admitted, that a legal proviſion for the clergy, compulſory upon thoſe who contribute to it, is expedient; the next queſtion will be, Whether this proviſion ſhould be confined to one ſect of Chriſtianity, or extended indifferently to all? Now, it ſhould be obſerved, that this queſtion never *can* offer itſelf where the people are agreed in their religious opinions; and that it never *ought* to ariſe, where a ſyſtem may be framed of doctrines and worſhip wide enough to comprehend their diſagreement; and which might ſatisfy all by uniting all in the articles of their common faith, and in a mode of divine worſhip, that omits every ſubject of controverſy or offence.—Where ſuch a comprehenſion is practicable, the comprehending religion ought to be made that of the ſtate. But if this be deſpaired of; if religious opinions exiſt, not only ſo various, but ſo contradictory, as to render it impoſſible to reconcile them to each other, or to any one confeſſion of faith, rule of diſcipline, or form of worſhip; if, conſequently, ſeparate congregations and different ſects muſt unavoidably continue in the country; under ſuch circumſtances, whether the laws ought to eſtabliſh one ſect in preference to the reſt, that is, whether they ought to confer the proviſion aſſigned to the maintenance of religion upon the teachers of one ſyſtem of doctrines alone, becomes a queſtion of neceſſary diſcuſſion and of great importance. And whatever we may determine concerning ſpeculative rights and abſtract proprieties, when we ſet about the framing of an eccleſiaſtical conſtitution adapted to real life, and to the actual ſtate of religion in the country, we ſhall find this queſtion very nearly related to, and principally indeed dependent upon another; namely, "In what way, or by whom ought the miniſters of religion to be *appointed?*" If the ſpecies of patronage be retained to which we are accuſtomed in this country, and which allows private individuals to nominate teachers of religion for diſtricts and congregations to which they are abſolute ſtrangers;

without ſome teſt propoſed to the perſons nominated, the utmoſt diſcordancy of religious opinions might ariſe between the ſeveral teachers and their reſpective congregations. A popiſh patron might appoint a prieſt to ſay maſs to a congregation of proteſtants; an epiſcopal clergyman be ſent to officiate in a pariſh of preſbyterians; or a preſbyterian divine to inveigh againſt the errors of popery before an audience of papiſts. The requiſition then of ſubſcription, or any other teſt by which the national religion is guarded, may be conſidered merely as a reſtriction upon the exerciſe of private patronage. The laws ſpeak to the private patron thus:—"Of thoſe whom we have previouſly pronounced to be fitly qualified to teach religion, we allow you to ſelect one; but we do not allow you to decide what religion ſhall be eſtabliſhed in a particular diſtrict of the country; for which deciſion you are nowiſe fitted by any qualifications which, as a private patron, you may happen to poſſeſs. If it be neceſſary that the point be determined for the inhabitants by any other will than their own, it is ſurely better that it ſhould be determined by a deliberate reſolution of the legiſlature, than by the caſual inclination of an individual, by whom the right is purchaſed, or to whom it devolves as a mere ſecular inheritance." Whereſoever, therefore, this conſtitution of patronage is adopted, a national religion, or the legal preference of one particular religion to all others, muſt almoſt neceſſarily accompany it. But, ſecondly, let it be ſuppoſed that the appointment of the miniſter of religion was in every pariſh left to the choice of the pariſhioners, might not this choice, we aſk, be ſafely exerciſed without its being limited to the teachers of any particular ſect? The effect of ſuch a liberty muſt be, that a papiſt, or a preſbyterian, a methodiſt, a moravian, or an anabaptiſt, would ſucceſſively gain poſſeſſion of the pulpit, according as a majority of the party happened at each election to prevail. Now with what violence the conflict would upon every vacancy be renewed; what bitter animoſities would be revived, or rather be conſtantly fed and kept alive in the neighbourhood; with what unconquerable averſion the teacher and his religion would be received by the defeated party, may be foreſeen by thoſe who reflect with how much paſſion every diſpute is carried on, in which the name of religion can be made to mix itſelf; much more where the cauſe itſelf is concerned ſo immediately as it would be in this. Or, thirdly, if the ſtate appoint the miniſters of religion, this conſtitution will differ little from the eſtabliſhment of a national religion; for the ſtate will, undoubtedly, appoint thoſe, and thoſe alone, whoſe religious opinions, or rather whoſe religious denomination agrees with its own; unleſs it be thought that any thing would be gained to religious liberty by transferring the choice of the national religion from the legiſlature of the country, to the magiſtrate who adminiſters the executive government. The only plan which ſeems to render the legal maintenance of a clergy practicable, without the legal preference of one ſect of Chriſtians to others, is that of an experiment which is ſaid to be attempted or deſigned in ſome of the new ſtates of North America. The nature of the plan is thus deſcribed. A tax is levied upon the inhabitants for the general ſupport of religion; the collector of the tax goes round with a regiſter in his hand, in which are inſerted, at the head of ſo many diſtinct columns, the names of the ſeveral religious ſects, that are profeſſed in the country. The perſon, who is called upon for the aſſeſſment, as ſoon as he has paid his quota, ſubſcribes his name and the ſum in which of the columns he pleaſes; and the amount of what is collected in each column is paid over to the miniſter of that denomination. In this ſcheme it is not left to the option of the ſubject, whether he will contribute, or how much he ſhall contribute to the maintenance of a Chriſtian miniſtry; it is only referred to his choice to determine by what ſect his contribution ſhall be received. The above arrangement is, undoubtedly, the beſt that has been propoſed upon this principle: it bears the appearance of liberality and juſtice; it may contain ſome ſolid advantages; nevertheleſs, it labours under inconveniencies which will be found, I think, upon trial, to overbalance all its recommendations. It is ſcarcely compatible with that, which is the firſt requiſite in an eccleſiaſtical eſtabliſhment, the diviſion of the country into pariſhes of a commodious extent. If the pariſhes be ſmall, and miniſters of every denomination be ſtationed in each, which the plan ſeems to ſuppoſe, the expenſe of their maintenance will become too burthenſome a charge for the country to ſupport. If, to reduce the expenſe, the diſtricts be enlarged, the place of aſſembling will oftentimes be too far removed from the reſidence of the perſons who ought to reſort to it. Again, the making the pecuniary ſucceſs of the different teachers of religion to depend upon the number and wealth of their reſpective followers, would naturally generate ſtrifes, and indecent jealouſies amongſt them, as well as produce a polemical and proſelyting ſpirit, founded in or mixed with views of private gain, which would both deprave the principles of the clergy, and diſtract the country with endleſs contentions.

The argument, then, by which eccleſiaſtical eſtabliſhments are defended, proceeds by theſe ſteps. The knowledge and profeſſion of Chriſtianity cannot be upheld without a clergy; a clergy cannot be ſupported without a legal proviſion; a legal proviſion for the clergy cannot be conſtituted without the preference of one ſect of Chriſtians to the reſt: and the concluſion will be conveniently ſatisfactory in the degree in which the truth of theſe ſeveral propoſitions can be made out.

If it be deemed expedient to eſtabliſh a national religion, that is to ſay, one ſect in preference to all others; ſome *teſt*, by which the teachers of that ſect may be diſtinguiſhed from the teachers of different ſects, appears to be an indiſpenſable conſequence. The exiſtence of ſuch an eſtabliſhment ſuppoſes it; the very notion of a national religion includes that of a teſt. But this neceſſity, which is real, hath, according to the faſhion of human affairs, furniſhed to almoſt every church a pretence for extending, multiplying and continuing ſuch teſts beyond what the occaſion juſtified. For though ſome purpoſes of order and tranquillity may be anſwered by the eſtabliſhment of creeds and confeſſions, yet they are at all times attended with ſerious inconveniencies. They check inquiry; they violate liberty; they enſnare the conſciences of the clergy by holding out temptations to prevarication; however they may expreſs the perſuaſion, or be accommodated to the controverſies, or to the fears, of the age in which they are compoſed, in proceſs of time, and by reaſon of the changes which are wont to take place in the judgment of mankind upon religious ſubjects, they come at length to contradict the actual opinions of the church, whoſe doctrines they profeſs to contain; and they often perpetuate the proſcription of ſects and tenets, from which any danger has long ceaſed to be apprehended.

It may not follow from theſe objections that teſts and ſubſcriptions ought to be aboliſhed; but it follows that they ought to be made as ſimple and eaſy as poſſible; that they ſhould be adapted from time to time to the varying ſentiments and circumſtances of the church in which they are received; and that they ſhould at no time advance one ſtep farther than ſome ſubſiſting neceſſity requires. If, for inſtance, promiſes of conformity to the rites, liturgy and offices of the church, be ſufficient to prevent confuſion and diſorder in the celebration of divine worſhip, then ſuch promiſes ought to be accepted in the place of ſtricter ſubſcriptions. If articles of *peace*, as they are called, that is, engagements not to preach certain doctrines, nor to revive certain controverſies, would exclude indecent altercations amongſt the national clergy, as well as ſecure to the public teaching of religion as much of uniformity and quiet as is neceſſary to edification; then confeſſions of *faith* ought to be converted into articles of peace. In a word, it ought to be held a ſufficient reaſon for relaxing the terms of ſubſcription, or for dropping any or all of the articles to be ſubſcribed, that no *preſent* neceſſity requires the ſtrictneſs which is complained of, or that it ſhould be extended to ſo many points of doctrine.

The diviſion of the country into diſtricts, and the ſtationing in each diſtrict a teacher of religion, forms the ſubſtantial part of every church eſtabliſhment. The varieties that have been introduced into the government and diſcipline of different churches are of inferior importance, when compared with this, in which they all agree. Of theſe economical queſtions, none ſeems more material than that which has been long agitated in the reformed churches of Chriſtendom, whether a parity amongſt the clergy, or a diſtinction of orders in the miniſtry, be more conducive to the general ends of the inſtitution. In favour of that ſyſtem which the laws of this country have preferred, we may allege the following reaſons; that it ſecures tranquillity and ſubordination amongſt the clergy themſelves; that it correſponds with the gradations of rank in civil life, and provides for the edification of each rank, by ſtationing in each an order of clergy of their own claſs and quality; and laſtly, that the ſame fund produces more effect, both as an allurement to men of talents to enter into the church, and as a ſtimulus to the induſtry of thoſe who are already in it, when diſtributed into prizes of different value, than when divided into equal ſhares.

After the ſtate has once eſtabliſhed a particular ſyſtem of faith as a national religion, a queſtion will ſoon occur, concerning the treatment and toleration of thoſe who *diſſent* from it. This queſtion is properly preceded by another, concerning the right which the civil magiſtrate poſſeſſes to interfere in matters of religion at all: for although this right be acknowledged whilſt he is employed ſolely in providing means of public inſtruction, it will probably be diſputed, indeed it ever has been, when he proceeds to inflict penalties, to impoſe reſtraints or incapacities on the account of religious diſtinctions. They who admit no other juſt original of civil government, than what is founded in ſome ſtipulation with its ſubjects, are at liberty to contend that the concerns of religion were excepted out of the ſocial compact; that in an affair which can only be tranſacted between God and a man's own conſcience, no commiſſion or authority was ever delegated to the civil magiſtrate, or could indeed be transferred from the perſon himſelf to any other. We, however, who have rejected this theory, becauſe we cannot diſcover any actual contract between the ſtate and the people, and becauſe we cannot allow an arbitrary fiction to be made the foundation of real rights and of real obligations, find ourſelves precluded from this diſtinction. The reaſoning which deduces the authority of civil government from the will of God, and which collects that will from public expediency alone, binds us to the unreſerved concluſion, that the juriſdiction of the magiſtrate is limited by no conſideration but that of general utility: in plainer terms, that whatever be the ſubject to be regulated, it is lawful for him to interfere whenever his interference, in its general tendency, appears to be conducive to the common intereſt. There is nothing in the nature of religion, as *ſuch*, which exempts it from the authority of the legiſlator, when the ſafety or welfare of the community requires his interpoſition. It has been ſaid, indeed, that religion, pertaining to the intereſts of a life to come, lies beyond the province of civil government, the office of which is confined to the affairs of this life. But, in reply to this objection, it may be obſerved, that when the laws interfere even in religion, they interfere only with temporals; their effects terminate, their power operates only upon thoſe rights and intereſts, which confeſſedly belong to their diſpoſal. The acts of the legiſlature, the edicts of the prince, the ſentence of the judge cannot affect my ſalvation; nor do they, without the moſt abſurd arrogance, pretend to any ſuch power: but they may deprive me of liberty, of property, and even of life itſelf on account of my religion; and however I may complain of the injuſtice of the ſentence, by which I am condemned, I cannot allege, that the magiſtrate has tranſgreſſed the boundaries of his juriſdiction; becauſe the property, the liberty, and the life of the ſubject, *may* be taken away by the authority of the laws, for any reaſon, which, in the judgment of the legiſlature, renders ſuch a meaſure neceſſary to the common welfare. Moreover, as the precepts of religion may regulate all the offices of life, or may be ſo conſtrued as to extend to all, the exemption of religion from the control of human laws might afford a plea, which would exclude civil government from every authority over the conduct of its ſubjects. Religious liberty is like civil liberty, not an immunity from reſtraint, but the being reſtrained by no law, but what in a greater degree conduces to the public welfare.

Still it is right "to obey God rather than man." Nothing that we have ſaid encroaches upon the truth of this ſacred and undiſputed maxim: the right of the magiſtrate to ordain, and the obligation of the ſubject to obey, in matters of religion, may be very different; and will be ſo as often as they flow from oppoſite apprehenſions of the divine will. In affairs that are properly of a civil nature; in "the things that are Ceſar's," this difference ſeldom happens. The law authorizes the act which it enjoins; revelation being either ſilent upon the ſubject, or referring to the laws of the country, or requiring only that men act by ſome fixed rule, and that this rule be eſtabliſhed by competent authority. But when human laws interpoſe their direction in matters of religion, by dictating, for example, the object or the mode of divine worſhip; by prohibiting the profeſſion of ſome articles of faith, and by exacting that of others, they are liable to claſh with what private perſons believe to be already ſettled by precepts of revelation; or to contradict what God himſelf, they think, hath declared to be true. In this caſe, on whichever ſide the miſtake lies, or whatever plea the ſtate may allege to juſtify its edict, the ſubject can have none to excuſe his compliance. The ſame conſideration alſo points out the diſtinction, as to the authority of the ſtate, between temporals and ſpirituals. The magiſtrate is not to be obeyed in temporals more than in ſpirituals, where a repugnancy is perceived between his commands, and any credited manifeſtations of the divine will; but ſuch repugnancies are much leſs likely to ariſe in one caſe than the other.

When we grant that it is lawful for the magiſtrate to interfere in religion as often as his interference appears to him to conduce, in its general tendency, to the public happineſs; it may be argued, from this conceſſion, that, ſince ſalvation is the higheſt intereſt of mankind, and ſince, conſequently, to advance *that* is to promote the public happineſs in the beſt way, and in the greateſt degree, in which it can be promoted, it follows, that it is not only the right, but the duty of every magiſtrate, inveſted with ſupreme power, to enforce upon his ſubjects the reception of that religion, which he deems moſt acceptable to God; and to enforce it by ſuch methods as may appear moſt effectual for the end propoſed. A popiſh king, for example, who ſhould believe that ſalvation is not attainable out of the precincts of the Romiſh church, would derive a right from our principles (not to ſay that he would be bound by them) to employ the power with which the conſtitution intruſted him, and which power, in abſolute monarchies, commands the lives and fortunes of every ſubject of the empire, in reducing his people within that communion. We confeſs that this conſequence is inferred from the principles we have laid down concerning the foundation of civil authority, not without the reſemblance of a regular deduction: we confeſs alſo that it is a concluſion which it behoves us to diſpoſe of; becauſe, if it really follow from our theory of government, the theory itſelf ought to be given up.

Now it will be remembered, that the terms of our propoſition are theſe: "That it is lawful for the magiſtrate to interfere in the affairs of religion, whenever his interference appears to him to conduce, by its general tendency, to the public happineſs." The clauſe of "general tendency," when this rules comes to be applied, will be found a very ſignificant part of the direction. It obliges the magiſtrate to reflect, not only, whether the religion which he wiſhes to propagate amongſt his ſubjects, be that which will beſt ſecure their eternal welfare; not only, whether the methods he employs be likely to effectuate the eſtabliſhment of that religion; but alſo upon this further queſtion, whether the kind of interference, which he is about to exerciſe, if it were adopted as a common maxim amongſt ſtates and princes, or received as a general rule for the conduct of government in matters of religion, would, upon the whole, and in the maſs of inſtances in which his example might be imitated, conduce to the furtherance of human ſalvation. If the magiſtrate, for example, ſhould think that, although the application of his power might, in the inſtance concerning which he deliberates, advance the true religion, and together with it the happineſs of his people, yet that the ſame engine, in other hands, who might aſſume the right to uſe it with the like pretenſions of reaſon and authority that he himſelf alleges, would more frequently ſhut out truth, and obſtruct the means of ſalvation; he would be bound by this opinion, ſtill admitting public utility to be the ſupreme rule of his conduct, to refrain from expedients, which, whatever particular effects *he* may expect from them, are in their general operation dangerous or hurtful. If there be any difficulty in the ſubject, it ariſes from that which is the cauſe of every difficulty in morals—the competition of particular and general conſequences; or, what is the ſame thing, the ſubmiſſion of one general rule to another rule which is ſtill more general.

Bearing then in mind that it is the *general* tendency of the meaſure, or, in other words, the effects which would ariſe from the meaſure being *generally* adopted, that fixes upon it the character of rectitude or injuſtice; we proceed to inquire what is the degree and the ſort of interference of ſecular laws in matters of religion, which are likely to be beneficial to the public happineſs. There are two maxims, which will in a great meaſure regulate our concluſions upon this head. The firſt is, that any form of Chriſtianity is better than no religion at all: the ſecond, that of different ſyſtems of faith, that is the beſt which is the trueſt. The firſt of theſe poſitions will hardly be diſputed, when we reflect, that every ſect and modification of Chriſtianity holds out the happineſs and miſery of another life, as depending chiefly upon the practice of virtue or of vice in this; and that the diſtinctions of virtue and vice are nearly the ſame in all. A perſon who acts under the impreſſion of theſe hopes and fears, though combined with many errors and ſuperſtitions, is more likely to advance both the public happineſs and his own, than one who is deſtitute of all expectation of a future account. The latter propoſition is founded in the conſideration that the principal importance of religion conſiſts in its influence upon the fate and condition of a future exiſtence. This influence belongs only to that religion which comes from God. A political religion may be framed, which ſhall embrace the purpoſes, and deſcribe the duties, of political ſociety perfectly well; but if it be not delivered by God, what aſſurance does it afford, that the deciſions of the divine judgment will have any regard to the rules which it contains? By a man who acts with a view to a future judgment, the authority of a religion is the firſt thing inquired after; a religion which wants authority, with him wants every thing. Since then this authority appertains, not to the religion which is moſt commodious, to the religion which is moſt ſublime and efficacious, to the religion which ſuits beſt with the form, or ſeems moſt calculated to uphold the power and ſtability of civil government, but only to that religion which comes from God; we are juſtified in pronouncing the *true* religion, by its very *truth*, and independently of all conſiderations of tendencies, aptneſſes, or any other internal qualities whatever, to be univerſally the beſt.

From the firſt propoſition follows this inference, that when the ſtate enables its ſubjects to learn *ſome* form of Chriſtianity, by diſtributing teachers of a religious ſyſtem throughout the country, and by providing for the maintenance of theſe teachers at the public expenſe; that is, in fewer terms, when the laws *eſtabliſh* a national religion, they exerciſe a power and an interference, which are likely, in their general tendency, to promote the intereſt of mankind; for even ſuppoſing the ſpecies of Chriſtianity which the laws patronize to be erroneous and corrupt, yet when the option lies between this religion and no religion at all, which would be the conſequence of leaving the people without any public means of inſtruction, or any regular celebration of the offices of Chriſtianity, our propoſition teaches us that the former alternative is conſtantly to be preferred.

But after the right of the magiſtrate to eſtabliſh a particular religion has been, upon this principle, admitted; a doubt ſometimes preſents itſelf, whether the religion which he ought to eſtabliſh be that which he himſelf profeſſes, or that which he obſerves to prevail amongſt the majority of the people. Now when we conſider this queſtion with a view to the formation of a general rule upon the ſubject, which view alone can furniſh a juſt ſolution of the doubt, it muſt be aſſumed to be an equal chance whether of the two religions contains more of truth, that of the magiſtrate, or that of the people. The chance then that is left to truth being equal upon both ſuppoſitions, the remaining conſideration will be, from which arrangement more efficacy can be expected—from an order of men appointed to teach the people their own religion, or to convert them to another. In my opinion, the advantage lies on the ſide of the former ſcheme; and this opinion, if it be aſſented to, makes it the duty of the magiſtrate, in the choice of the religion which he eſtabliſhes, to conſult the faith of the nation rather than his own.

The caſe alſo of diſſenters muſt be determined by the principles juſt now ſtated. *Toleration* is of two kinds: the allowing to diſſenters the unmoleſted profeſſion and exerciſe of their religion, but with an excluſion from offices of truſt and emolument in the ſtate, which is a *partial* toleration; and the admitting them, without diſtinction, to all the civil privileges and capacities of other citizens, which is a *complete* toleration. The expediency of toleration, and conſequently the right of every citizen to demand it, as far as relates to liberty of conſcience, and the claim of being protected in the free and ſafe profeſſion of his religion, is deducible from the *ſecond* of thoſe propoſitions, which we have delivered as the grounds of our concluſions upon the ſubject. That propoſition aſſerts truth, and truth in the abſtract, to be the ſupreme perfection of every religion. The advancement, conſequently, and diſcovery of truth, is that end to which all regulations concerning religion ought principally to be adapted. Now every ſpecies of intolerance which enjoins ſuppreſſion and ſilence; and every ſpecies of perſecution which enforces ſuch injunctions, is adverſe to the progreſs of truth; forasmuch as it cauſes that to be fixed by one ſet of men, at one time, which is much better, and with much more probability of ſucceſs, left to the independent and progreſſive inquiries of ſeparate individuals. Truth reſults from diſcuſſion and from controverſy; is inveſtigated by the labours and reſearches of private perſons. Whatever, therefore, prohibits theſe, obſtructs that induſtry, and that liberty, which it is the common intereſt of mankind to promote. In religion, as in other ſubjects, truth, if left to itſelf, will almoſt always obtain the aſcendency. If different religions be profeſſed in the ſame country, and the minds of men remain unfettered and unawed by intimidations of law, that religion which is founded in maxims of reaſon and credibility, will gradually gain over the other to it. I do not mean that men will formally renounce their ancient religion, but that they will adopt into it the more rational doctrines, the improvements and diſcoveries of the neighbouring ſect; by which means the worſe religion, without the ceremony of a reformation, will inſenſibly aſſimilate itſelf to the better. If popery, for inſtance, and proteſtantiſm were permitted to dwell quietly together, papiſts might not become proteſtants, (for the name is commonly the laſt thing that is changed *) but they would become more enlightened and informed; they would by little and little incorporate into their creed many of the tenets of proteſtantiſm, as well as imbibe a portion of its ſpirit and moderation.

The juſtice and expediency of toleration we found primarily in its conduciveneſs to truth, and in the ſuperior value of truth to that of any other quality which a religion can poſſeſs: this is the principal argument; but there are ſome auxiliary conſiderations too important to be omitted. The confining of the ſubject to the religion of the ſtate, is a needleſs violation of natural liberty, and in an inſtance in which conſtraint is always grievous. Perſecution produces no ſincere conviction, nor any real change of opinion; on the contrary, it vitiates the public morals by driving men to prevarication, and commonly ends in a general though ſecret infidelity, by impoſing, under the name of revealed religion, ſyſtems of doctrine which men cannot believe, and dare not examine: finally, it diſgraces the character, and wounds the reputation, of Chriſtianity itſelf, by making it the author of oppreſſion, cruelty, and bloodſhed.

Under the idea of religious toleration I include the toleration of all books of ſerious argumentation: but I deem it no infringement of religious liberty to reſtrain the circulation of ridicule, invective, and mockery, upon religious ſubjects; becauſe this ſpecies of writing applies ſolely to the paſſions, weakens the judgment, and contaminates the imagination of its readers; has no tendency whatever to aſſiſt either the inveſtigation or the impreſſion of truth; on the contrary, whilſt it ſtays not to diſtinguiſh between the authority of different religions, it deſtroys alike the influence of all.

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* Would we let the *name* ſtand, we might often attract men, without their perceiving it, much nearer to ourſelves, than, if they did perceive it, they would be willing to come.

Concerning the admiſſion of diſſenters from the eſtabliſhed religion to offices and employments in the public ſervice, which is neceſſary to render toleration *complete*, doubts have been entertained with ſome appearance of reaſon. It is poſſible that ſuch religious opinions may be holden as are utterly incompatible with the neceſſary functions of civil government; and which opinions conſequently diſqualify thoſe who maintain them, from exerciſing any ſhare in its adminiſtration. There have been enthuſiaſts who held that Chriſtianity has aboliſhed all diſtinction of property, and that ſhe enjoins upon her followers a community of goods. With what tolerable propriety could one of this ſect be appointed a judge or a magiſtrate, whoſe office it is to decide upon queſtions of private right, and to protect men in the excluſive enjoyment of their property? It would be equally abſurd to intruſt a military command to a Quaker, who believes it to be contrary to the goſpel to take up arms. This is poſſible; therefore it cannot be laid down as an univerſal truth, that religion is not in its nature a cauſe which will juſtify excluſion from public employments. When we examine, however, the ſects of Chriſtianity which actually prevail in the world, we muſt confeſs that, with the ſingle exception of refuſing to bear arms, we find no tenet in any of them which incapacitates men for the ſervice of the ſtate. It has indeed been aſſerted that diſcordancy of religions, even ſuppoſing each religion to be free from any errors that affect the ſafety or the conduct of government, is enough to render men unfit to act together, in public ſtations. But upon what argument, or upon what experience is this aſſertion founded? I perceive no reaſon why men of different religious perſuaſions may not ſit upon the ſame bench, deliberate in the ſame council, or fight in the ſame ranks, as well as men of various or oppoſite opinions upon any controverted topic of natural philoſophy, hiſtory, or ethics.

There are two caſes in which teſt laws are wont to be applied, and in which, if in any, they may be defended. One is where two or more religions are contending for eſtabliſhment; and where there appears no way of putting an end to the conteſt but by giving to one religion ſuch a decided ſuperiority in the legiſlature and government of the country, as to ſecure it againſt danger from any other. I own that I ſhould aſſent to this precaution with many ſcruples. If the diſſenters from the eſtabliſhment become a majority of the people, the eſtabliſhment itſelf ought to be altered or qualified. If there exiſt amongſt the different ſects of the country ſuch a parity of numbers, intereſt, and power, as to render the preference of one ſect to the reſt, and the choice of that ſect, a matter of hazardous ſucceſs, and of doubtful election, ſome plan ſimilar to that which is meditated in North America, and which we have deſcribed in a preceding part of the preſent chapter, though encumbered with great difficulties, may perhaps ſuit better with this divided ſtate of public opinions, than any conſtitution of a national church whatever. In all other ſituations, the eſtabliſhment will be ſtrong enough to maintain itſelf. However, if a teſt be applicable with juſtice upon this principle at all, it ought to be applied in regal governments to the chief magiſtrate himſelf, whoſe power might otherwiſe overthrow or change the eſtabliſhed religion of the country, in oppoſition to the will and ſentiments of the people.

The ſecond caſe of *excluſion*, and in which, I think, the meaſure is more eaſily vindicated, is that of a country in which ſome diſaffection to the ſubſiſting government happens to be connected with certain religious diſtinctions. The ſtate undoubtedly has a right to refuſe its power and its confidence to thoſe who ſeek its deſtruction. Wherefore, if the generality of any religious ſect entertain diſpoſitions hoſtile to the conſtitution, and if government have no other way of knowing its enemies than by the religion which they profeſs, the profeſſors of that religion may juſtly be excluded from offices of truſt and authority. But even *here* it ſhould be obſerved, that it is not againſt the religion that government ſhuts its doors, but againſt thoſe political principles, which, however independent they may be of any article of religious faith, the members of that communion are found in fact to hold. Nor would the legiſlator make religious tenets the teſt of men's inclinations towards the ſtate, if he could diſcover any other that was equally certain and notorious. Thus, if the members of the Romiſh church, for the moſt part, adhere to the intereſts, or maintain the right of a foreign pretender to the crown of theſe kingdoms; and if there be no way of diſtinguiſhing thoſe who do from thoſe who do not retain ſuch dangerous prejudices; government is well warranted in fencing out the whole ſect from ſituations of truſt and power. But even in this example, it is not to popery that the laws object, but to popery as the mark of jacobitiſm; an equivocal indeed and fallacious mark, but the beſt, and perhaps the only one, that can be deviſed. But then it ſhould be remembered, that as the connexion between popery and jacobitiſm, which is the ſole cauſe of ſuſpicion, and the ſole juſtification of thoſe ſevere and jealous laws which have been enacted againſt the profeſſors of that religion, was accidental in its origin, ſo probably it will be temporary in its duration; and that theſe reſtrictions ought not to continue one day longer than ſome viſible danger renders them neceſſary to the preſervation of public tranquillity.

After all, it may be aſked, why ſhould not the legiſlator direct his teſt againſt the political principles themſelves which he wiſhes to exclude, rather than encounter them through the medium of religious tenets, the only crime and the only danger of which conſiſt in their preſumed alliance with the former? Why, for example, ſhould a man be required to renounce tranſubſtantiation, before he be admitted to an office in the ſtate, when it might ſeem to be ſufficient that he abjure the pretender? There are but two anſwers that can be given to the objection which this queſtion contains; firſt, that it is not opinions which the laws fear, ſo much as inclinations;

and that political inclinations are not ſo eaſily detected by the affirmation or denial of any abſtract propoſition in politics, as by the diſcovery of the religious creed with which they are wont to be united: ſecondly, that when men renounce their religion, they commonly quit all connexion with the members of the church which they have left; that church no longer expecting aſſiſtance or friendſhip from them; whereas particular perſons might inſinuate themſelves into offices of truſt and authority, by ſubſcribing political aſſertions, and yet retain their predilection for the intereſts of the religious ſect to which they continued to belong. By which means government would ſometimes find, though it could not accuſe the individual, whom it had received into its ſervice, of diſaffection to the civil eſtabliſhment, yet that, through him, it had communicated the aid and influence of a powerful ſtation to a party who were hoſtile to the conſtitution. Theſe anſwers, however, we propoſe, rather than defend. The meaſure certainly cannot be defended at all, except where the ſuſpected union between certain obnoxious principles in politics, and certain tenets in religion, is nearly univerſal: in which caſe it makes little difference to the ſubſcriber, whether the teſt be religious or political; and the ſtate is ſomewhat better ſecured by the one than the other.

The reſult of our examination of thoſe general tendencies, by which every interference of civil government in matters of religion ought to be tried, is this: "That a comprehenſive national religion, guarded by a few articles of peace and conformity, together with a legal proviſion for the clergy of that religion; and with a *complete* toleration of all diſſenters from the eſtabliſhed church, without any other limitation or exception, than what ariſes from the conjunction of dangerous political diſpoſitions with certain religious tenets, appears to be, not only the moſt juſt and liberal, but the wiſeſt and ſafeſt ſyſtem, which a ſtate can adopt: inaſmuch as it unites the ſeveral perfections, which a religious conſtitution ought to aim at—liberty of conſcience, with means of inſtruction; the progreſs of truth, with the peace of ſociety; the right of private judgment, with the care of the public ſafety."

Chapter XI.

OF POPULATION AND PROVISION; AND OF AGRICULTURE AND COMMERCE, AS SUBSERVIENT THERETO.

THE final view of all rational politics is to produce the greateſt quantity of happineſs in a given tract of country. The riches, ſtrength, and glory of nations; the topics which hiſtory celebrates, and which alone almoſt engage the praiſes, and poſſeſs the admiration of mankind, have no value farther than as they contribute to this end. When they interfere with it, they are evils, and not the leſs real for the ſplendour that ſurrounds them.

Secondly, although we ſpeak of communities as of ſentient beings; although we aſcribe to them happineſs and miſery, deſires, intereſts, and paſſions, nothing really exiſts or feels but *individuals*. The happineſs of a people is made up of the happineſs of ſingle perſons; and the quantity of happineſs can only be augmented by increaſing the number of the percipients, or the pleaſure of their perceptions.

Thirdly, notwithſtanding that diverſity of condition, eſpecially different degrees of plenty, freedom, and ſecurity, greatly vary the quantity of happineſs enjoyed by the ſame number of individuals; and notwithſtanding that extreme caſes may be found, of human beings ſo galled by the rigours of ſlavery, that the increaſe of numbers is only the amplification of miſery; yet, within certain limits, and within thoſe limits to which civil life is diverſified under the temperate governments that obtain in Europe, it may be affirmed, I think, with certainty, that the quantity of happineſs produced in any given diſtrict, *ſo far* depends upon the number of inhabitants, that in comparing adjoining periods in the ſame country, the collective happineſs will be nearly in the exact proportion of the numbers, that is, twice the number of inhabitants will produce double the quantity of happineſs; in diſtant periods, and different countries, under great changes or great diſſimilitude of civil condition, although the proportion of enjoyment may fall much ſhort of that of the numbers, yet ſtill any conſiderable exceſs of numbers will uſually carry with it a preponderation of happineſs; that, at leaſt, it may, and ought to be aſſumed in all political deliberations, that a larger portion of happineſs is enjoyed amongſt *ten* perſons, poſſeſſing the means of healthy ſubſiſtence, that can be produced by *five* perſons, under every advantage of power, affluence, and luxury.

From theſe principles it follows, that the quantity of happineſs in a given diſtrict, although it is poſſible it may be increaſed, the number of inhabitants remaining the ſame, is chiefly and moſt naturally affected by alteration of the numbers: that, conſequently, the decay of population is the greateſt evil that a ſtate can ſuffer; and the improvement of it the object which ought, in all countries, to be aimed at in preference to every other political purpoſe whatſoever.

The importance of population, and the ſuperiority of *it* to every other national advantage, are points neceſſary to be inculcated, and to be underſtood; inaſmuch as falſe eſtimates, or fantaſtic notions of national grandeur, are perpetually drawing the attention of ſtateſmen and legiſlators from the care of this, which is, at all times, the true and abſolute intereſt of a country: for which reaſon, we have ſtated theſe points with unuſual formality. We will confeſs, however, that a competition can ſeldom ariſe between the advancement of population and any meaſure of ſober utility; becauſe, in the ordinary progreſs of human affairs, whatever, in any way, contributes to make a people happier, tends to render them more numerous.

In the fecundity of the human, as of every other ſpecies of animals, nature has provided for an indefinite multiplication. Mankind have increaſed to their preſent number from a ſingle pair: the offspring of early marriages, in the ordinary courſe of procreation, do more than replace the parents: in countries, and under circumſtances very favourable to ſubſiſtence, the population has been doubled in the ſpace of twenty years; the havoc occaſioned by wars, earthquakes, famine, or peſtilence, is uſually repaired in a ſhort time. Theſe indications ſufficiently demonſtrate the tendency of nature in the human ſpecies to a continual increaſe of its numbers. It becomes therefore a queſtion that may reaſonably be propounded, what are the cauſes which confine or check the natural progreſs of this multiplication? And the anſwer which firſt preſents itſelf to the thoughts of the inquirer is, that the population of a country muſt ſtop when the country can maintain no more, that is, when the inhabitants are already ſo numerous as to exhauſt all the proviſion which the ſoil can be made to produce. This, however, though an inſuperable bar, will ſeldom be found to be *that* which actually checks the progreſs of population in any country of the world; becauſe the number of the people have ſeldom, in any country, arrived at this limit, or even approached to it. The fertility of the ground, in temperate regions, is capable of being improved by cultivation to an extent which is unknown: much, however, beyond the ſtate of improvement in any country in Europe. In our own, which holds almoſt the firſt place in the knowledge and encouragement of agriculture, let it only be ſuppoſed that every field in England of the ſame original quality with thoſe in the neighbourhood of the metropolis, and conſequently capable of the ſame fertility, were by a like management made to yield an equal produce; and it may be aſſerted, I believe, with truth, that the quantity of human proviſion raiſed in the iſland would be increaſed five fold. The two principles, therefore, upon which population ſeems primarily to depend, the fecundity of the ſpecies, and the capacity of the ſoil, would in moſt, perhaps in all countries, enable it to proceed much farther than it has yet advanced. The number of marriageable women, who, in each country, remain unmarried, afford a computation how much the agency of nature in the diffuſion of human life is cramped and contracted; and the quantity of waſte, neglected, or miſmanaged ſurface—together with a compariſon, like the preceding, of the crops raiſed from the ſoil in the neighbourhood of populous cities, and under a perfect ſtate of cultivation, with thoſe which lands of equal or ſuperior quality yield in different ſituations—will ſhew in what proportion the indigenous productions of the earth are capable of being farther augmented.

The fundamental propoſition upon the ſubject of *population*, which muſt guide every endeavour to improve it, and from which every concluſion concerning it may be deduced, is this: "Wherever the commerce between the ſexes is regulated by marriage, and a proviſion for that mode of ſubſiſtence, to which each claſs of the community is accuſtomed, can be procured with eaſe and certainty, there the number of the people will increaſe; and the rapidity, as well as the extent of the increaſe, will be proportioned to the degree in which theſe cauſes exiſt."

This propoſition we will draw out into the ſeveral principles which it contains.

I. Firſt, the propoſition aſſerts the "neceſſity of confining the intercourſe of the ſexes to the marriage union." It is only in the marriage union that this intercourſe is ſufficiently prolific. Beſide which, family eſtabliſhments alone are fitted to perpetuate a ſucceſſion of generations. The offspring of a vague and promiſcuous concubinage are not only few, and liable to periſh by neglect, but are ſeldom prepared for, or introduced into ſituations ſuited to the raiſing of families of their own. Hence the advantages of marriage. Now nature, in the conſtitution of the ſexes, has provided a ſtimulus which will infallibly ſecure the frequency of marriages, with all their beneficial effects upon the ſtate of population, provided the male part of the ſpecies be prohibited from irregular gratifications. This impulſe, which is ſufficient to ſurmount almoſt every impediment to marriage, will operate in proportion to the difficulty, expenſe, danger, or infamy, the ſenſe of guilt, or the fear of puniſhment, which attend licentious indulgencies. Wherefore, in countries in which ſubſiſtence is become ſcarce, it behoves the ſtate to watch over the public morals with increaſed ſolicitude: for nothing but the inſtinct of nature, under the reſtraint of chaſtity, will induce men to undertake the labour, or conſent to the ſacrifice of perſonal liberty and indulgence, which the ſupport of a family, in ſuch circumſtances, requires.

II. The ſecond requiſite which our propoſition ſtates, as neceſſary to the ſucceſs of population, is, "The eaſe and certainty with which a proviſion can be procured for that mode of ſubſiſtence to which each claſs of the community is accuſtomed." It is not enough that men's *natural* wants be ſupplied, that a proviſion adequate to the real exigencies of human life be attainable: habitual ſuperfluities become actual wants; opinion and faſhion convert articles of ornament and luxury into neceſſaries of life. And it muſt not be expected from men in general, at leaſt in the preſent relaxed ſtate of morals and diſcipline, that they will enter into marriages which degrade their condition, reduce their mode of living, deprive them of the accommodations to which they have been accuſtomed, or even of thoſe ornaments or appendages of rank and ſtation, which they have been taught to regard as belonging to their birth, or claſs, or profeſſion, or place in ſociety. The ſame conſideration, namely, a view to their *accuſtomed* mode of life, which is ſo apparent in the ſuperior orders of the people, has no leſs influence upon thoſe ranks which compoſe the maſs of the community. The kind and quality of food and liquor, the ſpecies of habitation, furniture, and clothing, to which the common people of each country are habituated, muſt be attainable with eaſe and certainty before marriages will be ſufficiently early and general to carry the progreſs of population to its juſt extent. It is in vain to allege, that a more ſimple diet, ruder habitations, or coarſer apparel, would be ſufficient for the purpoſes of life and health, or even of phyſical eaſe and pleaſure. Men will not marry with this encouragement. For inſtance, when the common people of a country are accuſtomed to eat a large proportion of animal food, to drink wine, ſpirits, or beer, to wear ſhoes and ſtockings, to dwell in ſtone houſes, they will not marry to live in clay cottages, upon roots and milk, with no other clothing than ſkins, or what is neceſſary to defend the trunk of the body from the effects of cold; although theſe laſt may be all that the ſuſtentation of life and health requires, or that even tribute much to animal comfort and enjoyment.

The eaſe then, and certainty, with which the means can be procured, not barely of ſubſiſtence, but of that mode of ſubſiſting which cuſtom hath in each country eſtabliſhed, form the point upon which the ſtate and progreſs of population chiefly depend. Now, there are three cauſes which evidently regulate this point. The mode itſelf of ſubſiſting which prevails in the country; the quantity of proviſion ſuited to that mode of ſubſiſtence, which is either raiſed in the country, or imported into it; and laſtly, the diſtribution of that proviſion.

Theſe three cauſes merit diſtinct conſiderations.

I. The mode of living which actually obtains in a country. In China, where the inhabitants frequent the ſea ſhore, or the banks of large rivers, and ſubſiſt in a great meaſure upon fiſh, the population is deſcribed to be exceſſive. This peculiarity ariſes, not probably from any civil advantages, any care or policy, any particular conſtitution or ſuperior wiſdom of government; but ſimply from hence, that the ſpecies of food to which cuſtom hath reconciled the deſires and inclinations of the inhabitants, is that which, of all others, is procured in the greateſt abundance, with the moſt eaſe, and ſtands in need of the leaſt preparation. The natives of Indoſtan being confined, by the laws of their religion, to the uſe of vegetable food, and requiring little except rice, which the country produces in plentiful crops; and food, in warm climates, compoſing the only want of life; theſe countries are populous, under all the injuries of a deſpotic, and the agitations of an unſettled government. If any revolution, or what would be called perhaps refinement of manners, ſhould generate in theſe people a taſte for the fleſh of animals, ſimilar to what prevails amongſt the Arabian hordes; ſhould introduce flocks and herds into grounds which are now covered with corn; ſhould teach them to account a certain portion of this ſpecies of food amongſt the neceſſaries of life; the population, from this ſingle change, would ſuffer in a few years a great diminution: and this diminution would follow, in ſpite of every effort of the laws, or even of any improvement that might take place in their civil condition. In Ireland, the ſimplicity of living alone maintains a conſiderable degree of population, under great defects of police, induſtry, and commerce.

Under this head, and from a view of theſe conſiderations, may be underſtood the true evil and proper danger of *luxury*. Luxury, as it ſupplies employment and promotes induſtry, aſſiſts population. But then, there is another conſequence attending it, which counteracts, and often overbalances theſe advantages. When, by introducing more ſuperfluities into general reception, luxury has rendered the uſual accommodations of life more expenſive, artificial, and elaborate, the difficulty of maintaining a family, conformably with the eſtabliſhed mode of living, becomes greater, and what each man has to ſpare from his perſonal conſumption proportionably leſs: the effect of which is, that marriages grow leſs frequent, agreeably to the maxim above laid down, and which muſt be remembered as the foundation of all our reaſoning upon the ſubject, that men will not marry to *ſink* their place or condition in ſociety, or to forego thoſe indulgencies, which their own habits, or what they obſerve amongſt their equals, have rendered neceſſary to their ſatisfaction. This principle is applicable to every article of diet and dreſs, to houſes, furniture, attendance; and this effect will be felt in every claſs of the community. For inſtance, the cuſtom of wearing broad-cloth and fine linen repays the ſhepherd and flax-grower, feeds the manufacturer, enriches the merchant, gives not only ſupport but exiſtence to multitudes of families: hitherto, therefore, the effects are beneficial; and were theſe the only effects, ſuch elegancies, or, if you pleaſe to call them ſo, ſuch luxuries, could not be too univerſal. But here follows the miſchief: when once faſhion hath annexed the uſe of theſe articles of dreſs to any certain claſs, the middling ranks, for example, of the community, each individual of that rank finds them to be *neceſſaries* of life; that is, finds himſelf obliged to comply with the example of his equals, and to maintain that appearance which the cuſtom of ſociety requires. This obligation creates ſuch a demand upon his income, and withal adds ſo much to the coſt and burthen of a family, as to put it out of his power to marry, with the proſpect of continuing his habits, or of maintaining his place and ſituation in the world. We ſee, in this deſcription, the cauſe which induces men to waſte their lives in a barren celibacy; and this cauſe, which impairs the very ſource of population, is juſtly placed to the account of luxury.

It appears, then, that *luxury*, conſidered with a view to population, acts by two oppoſite effects; and it ſeems probable that there exiſts a point in the ſcale, to which luxury may aſcend, or to which the wants of mankind may be multiplied with advantage to the community, and beyond which the prejudicial conſequences begin to preponderate. The determination of this point, though it aſſume the form of an arithmetical problem, depends upon circumſtances too numerous, intricate, and undefined, to admit of a preciſe ſolution. However, from what has been obſerved concerning the tendency of luxury to diminiſh marriages, in which tendency the evil of it reſides, the following general concluſions may be eſtabliſhed.

1ſt. That, of different kinds of luxury, thoſe are the moſt innocent, which afford employment to the greateſt number of artiſts and manufacturers; or thoſe, in other words, in which the price of the work bears the greateſt proportion to that of the raw material. Thus, luxury in dreſs or furniture is univerſally preferable to luxury in eating, becauſe the articles which conſtitute the one, are more the production of human art and induſtry, than thoſe which ſupply the other.

2dly. That it is the *diffuſion*, rather than the *degree* of luxury, which is to be dreaded as a national evil. The miſchief of luxury conſiſts, as we have ſeen, in the obſtruction which it forms to marriage. Now, it is only a ſmall part of the people that the higher ranks in any country compoſe; for which reaſon, the facility or the difficulty of ſupporting the expenſe of *their* ſtation, and the conſequent increaſe or diminution of marriages among *them*, will influence the ſtate of population but little. So long as the prevalency of luxury is confined to a few of elevated rank, much of the benefit is felt, and little of the inconveniency. But when the imitation of the ſame manners deſcends, as it always will do, into the maſs of the people; when it advances the requiſites of living beyond what it adds to men's abilities to purchaſe them, then it is that luxury checks the formation of families, in a degree that ought to alarm the public fears.

3dly. That the condition moſt favourable to population is that of a laborious, frugal people, miniſtering to the demands of an opulent, luxurious nation; becauſe this ſituation, whilſt it leaves them every advantage of luxury, exempts them from the evils which naturally accompany its admiſſion into any country.

II. Next to the mode of living, we are to conſider "the quantity of proviſion ſuited to that mode, which is either raiſed in the country, or imported into it:" for this is the order in which we aſſigned the cauſes of population, and undertook to treat of them. Now, if we meaſure the quantity of proviſion by the number of human bodies it will ſupport in due health and vigour, this quantity, the extent and quality of the ſoil from which it is raiſed being given, will depend greatly upon the *kind*. For inſtance, a piece of ground capable of ſupplying animal food ſufficient for the ſubſiſtence of ten perſons, would ſuſtain, at leaſt, the double of that number with grain, roots, and milk. The firſt reſource of ſavage life is in the fleſh of wild animals: hence the numbers amongſt ſavage nations, compared with the tract of country which they occupy, are univerſally ſmall; becauſe this ſpecies of proviſion is, of all others, ſupplied in the ſlendereſt proportion. The next ſtep was the invention of paſturage, or the rearing of flocks and herds of tame animals: this alteration added to the ſtock of proviſion much. But the laſt and principal improvement was to follow; namely, tillage, or the artificial production of corn, eſculent plants, and roots. This diſcovery, whilſt it changed the quality of human food, augmented the quantity in a vaſt proportion. So far as the ſtate of population is governed and limited by the quantity of proviſion, perhaps there is no ſingle cauſe that affects it ſo powerfully, as the kind and quality of food which chance or uſage hath introduced into a country. In England, notwithſtanding the produce of the ſoil has been, of late, conſiderably increaſed, by the incloſure of waſtes, and the adoption, in many places, of a more ſucceſsful huſbandry, yet we do not obſerve a correſponding addition to the number of inhabitants; the reaſon of which appears to me to be the more general conſumption of animal food amongſt us. Many ranks of people whoſe ordinary diet was, in the laſt century, prepared almoſt entirely from milk, roots, and vegetables, now require every day a conſiderabe portion of the fleſh of animals. Hence a great part of the richeſt lands of the country are converted to paſturage. Much alſo of the bread-corn, which went directly to the nouriſhment of human bodies, now only contributes to it by fattening the fleſh of ſheep and oxen. The maſs and volume of proviſions are hereby diminiſhed; and what is gained in the melioration of the ſoil, is loſt in the quality of the produce. This conſideration teaches us, that tillage, as an object of national care and encouragement, is univerſally preferable to paſturage; becauſe the *kind* of proviſion which it yields goes much farther in the ſuſtentation of human life. Tillage is alſo recommended by this additional advantage, that it affords employment to a much more numerous peaſantry. Indeed, paſturage ſeems to be the art of a nation, either imperfectly civilized, as are many of the tribes which cultivate it in the internal parts of Aſia; or of a nation, like Spain, declining from its ſummit by luxury and inactivity.

The kind and quality of proviſion, together with the extent and capacity of the ſoil from which it is raiſed, being the ſame; the quantity procured will principally depend upon two circumſtances, the *ability* of the occupier, and the *encouragement* which he receives. The greateſt misfortune of a country is an indigent tenantry. Whatever be the native advantages of the ſoil, or even the ſkill and induſtry of the occupier, the want of a ſufficient capital confines every plan, as well as cripples and weakens every operation of huſbandry. This evil is felt, where agriculture is accounted a ſervile or mean employment; where farms are extremely ſubdivided, and badly furniſhed with habitations; where leaſes are unknown, or are of ſhort or precarious duration. With reſpect to the *encouragement* of huſbandry; in this, as in every other employment, the true reward of induſtry is in the price and ſale of the produce. The excluſive right to the produce is the only incitement which acts conſtantly and univerſally; the only ſpring which keeps human labour in motion. All therefore that the laws can do, is to ſecure this right to the occupier of the ground, that is, to conſtitute ſuch a ſyſtem of tenure, that the full and entire advantage of every improvement go to the benefit of the improver; that every man work for himſelf, and not for another; and that no one ſhare in the profit who does not aſſiſt in the production. By the *occupier* I here mean, not ſo much the perſon who performs the work, as him who procures the labour and directs the management: and I conſider the whole profit as *received* by the occupier, when the occupier is benefited by the whole value of what is produced, which is the caſe with the tenant who pays a fixed rent for the uſe of land, no leſs than with the proprietor who holds it as his own. The one has the ſame intereſt in the produce, and in the advantage of every improvement, as the other. Likewiſe the proprietor, though he grant out his eſtate to farm, may be conſidered as the *occupier*, in ſo much as he regulates the occupation by the choice, ſuperintendency, and encouragement of his tenants, by the diſpoſition of his lands, by erecting buildings, providing accommodations, by preſcribing conditions, or ſupplying implements and materials of improvement; and is entitled, by the rule of public expediency above mentioned, to receive, in the advance of his rent, a ſhare of the benefit which ariſes from the increaſed produce of his eſtate. The violation of this fundamental maxim of agrarian policy conſtitutes the chief objection to the holding of lands by the ſtate, by the king, by corporate bodies, by private perſons in right of their offices or benefices. The inconveniency to the public ariſes not ſo much from the unalienable quality of lands thus holden in perpetuity, as from hence, that proprietors of this deſcription ſeldom contribute much either of attention or expenſe to the cultivation of their eſtates, yet claim, by the rent, a ſhare in the profit of every improvement that is made upon them. This complaint can only be obviated by "long leaſes at a fixed rent," which convey a large portion of the intereſt to thoſe who actually conduct the cultivation. The ſame objection is applicable to the holding of lands by foreign proprietors, and in ſome degree to eſtates of too great extent being placed in the ſame hands.

III. Beſide the *production* of proviſion, there remains to be conſidered the DISTRIBUTION.—It is in vain that proviſions abound in the country, unleſs I be able to obtain a ſhare of them. This reflection belongs to every individual. The plenty of proviſion produced, the quantity of the public ſtock, affords ſubſiſtence to individuals, and encouragement to the formation of families, only in proportion as it is *diſtributed*, that is, in proportion as theſe individuals are allowed to draw from it a ſupply of their own wants. The *diſtribution*, therefore, becomes of equal conſequence to population with the *production*. Now, there is but one principle of diſtribution that can ever become univerſal, namely, the principle of "exchange;" or, in other words, that every man have ſomething to give in return for what he wants. Bounty, however it may come in aid of another principle, however it may occaſionally qualify the rigour, or ſupply the imperfection of an eſtabliſhed rule of diſtribution, can never itſelf become that rule or principle; becauſe men will not work to give the produce of their labour away. Moreover, the only equivalents that can be offered in exchange for proviſion, are *power* and *labour*. All property is *power*. What we call property in land is the power to uſe it, and to exclude others from the uſe. Money is the repreſentative of *power*, becauſe it is convertible into power: the value of it conſiſts in its faculty of procuring *power* over things and perſons. But *power* which reſults from civil conventions, and of this kind is what we call a man's fortune or eſtate, is neceſſarily confined to a few, and is withal ſoon exhauſted: whereas the capacity of *labour* is every man's natural poſſeſſion, and compoſes a conſtant and renewing fund. The hire, therefore, or produce of perſonal induſtry, is that which the bulk of every community muſt bring to market, in exchange for the means of ſubſiſtence; in other words, employment muſt, in every country, be the medium of diſtribution, and the ſource of ſupply to individuals. But when we conſider the *production* and *diſtribution* of proviſion, as diſtinct from, and independent of each other; when, ſuppoſing the ſame quantity to be produced, we inquire in what way, or according to what rule, it may be *diſtributed*, we are led to a conception of the ſubject not at all agreeable to truth and reality; for, in truth and reality, though proviſion muſt be produced before it be diſtributed, yet the production depends, in a great meaſure, upon the diſtribution. The quantity of proviſion raiſed out of the ground, ſo far as the raiſing of it requires human art or labour, will evidently be regulated by the demand; the demand, or, in other words, the price and ſale, being that which alone rewards the care, or excites the diligence of the huſbandman. But the ſale of proviſion depends upon the number, not of thoſe who want, but of thoſe who have ſomething to offer in return for what they want; not of thoſe who would conſume, but of thoſe who can buy; that is, upon the number of thoſe who have the fruits of ſome other kind of induſtry to tender in exchange for what they ſtand in need of from the production of the ſoil.

We ſee, therefore, the connexion between population and *employment*. Employment affects population "directly," as it affords the only medium of diſtribution by which individuals can obtain from the common ſtock a ſupply for the wants of their families: it affects population "indirectly," as it augments the ſtock itſelf of proviſion, in the only way by which the production of it can be effectually encouraged, by furniſhing purchaſers. No man can purchaſe without an equivalent; and that equivalent, by the generality of the people, muſt in every country be derived from employment.

And upon this baſis is founded the public benefit of *trade*, that is to ſay, its ſubſerviency to population, in which its only real utility conſiſts. Of that induſtry, and of thoſe arts and branches of trade, which are employed in the production, conveyance, and preparation of any principal ſpecies of human food, as of the buſineſs of the huſbandman, the butcher, baker, brewer, corn-merchant, &c. we acknowledge the neceſſity: likewiſe of thoſe manufactures which furniſh us with warm clothing, convenient habitations, domeſtic utenſils, as of the weaver, taylor, ſmith, carpenter, &c. we perceive (in climates, however, like ours, removed at a diſtance from the ſun) the conduciveneſs to population, by their rendering human life more healthy, vigorous, and comfortable. But not one half of the occupations which compoſe the trade of Europe, fall within either of theſe deſcriptions. Perhaps two thirds of the manufacturers in England are employed upon articles of confeſſed luxury, ornament, or ſplendor: in the ſuperfluous embelliſhment of ſome articles which are uſeful in their kind, or upon others which have no conceivable uſe or value, but what is founded in caprice or faſhion. What can be leſs neceſſary, or leſs connected with the ſuſtentation of human life, than the whole produce of the ſilk, lace, and plate manufactory? Yet what multitudes labour in the different branches of theſe arts! What can be imagined more capricious than the fondneſs for tobacco and ſnuff? Yet how many various occupations, and how many thouſands in each, are ſet at work in adminiſtering to this frivolous gratification! Concerning trades of this kind, (and this kind comprehends more than half of the trades that are exerciſed) it may fairly be aſked, "How, ſince they add nothing to the ſtock of proviſion, do they tend to increaſe the number of the people?" We are taught to ſay of trade, "that it maintains multitudes;" but by what means does it *maintain* them, when it produces nothing upon which the ſupport of human life depends?—In like manner with reſpect to foreign commerce; of that merchandize which brings the neceſſaries of life into a country, which imports, for example, corn, or cattle, or cloth, or fuel, we allow the tendency to advance population, becauſe it increaſes the ſtock of proviſion by which the people are ſubſiſted. But this effect of foreign commerce is ſo little ſeen in our own country, that, I believe, it may be affirmed of Great Britain, what Biſhop *Berkley* ſaid of a neighbouring iſland, that, if it were encompaſſed with a wall of braſs fifty cubits high, the country might maintain the ſame number of inhabitants that find ſubſiſtence in it at preſent; and that every neceſſary, and even every real comfort and accommodation of human life might be ſupplied in as great abundance as they now are. Here, therefore, as before, we may fairly aſk, by what operation it is, that foreign commerce, which brings into the country no one article of human ſubſiſtence, promotes the multiplication of human life?

The anſwer of this inquiry will be contained in the diſcuſſion of another; viz.

Since the ſoil will maintain many more than it can employ, what muſt be done, ſuppoſing the country to be full, with the remainder of the inhabitants? They who, by the rules of partition, (and ſome ſuch muſt be eſtabliſhed in every country) are entitled to the land; and they who, by their labour upon the ſoil, acquire a right in its produce, will not part with their property for nothing; or rather, they will no longer raiſe from the ſoil what they can neither uſe themſelves, nor exchange for what they want. Or laſtly, if theſe were willing to diſtribute what they could ſpare of the proviſion which the ground yielded, to others who had no ſhare or concern in the property or cultivation of it, yet ſtill the moſt enormous miſchiefs would enſue from great numbers remaining unemployed. The idleneſs of one half of the community would overwhelm the whole with confuſion and diſorder. One only way preſents itſelf of removing the difficulty which this queſtion ſtates, and which is ſimply this; that they, whoſe work is not wanted, nor can be employed in the raiſing of proviſion out of the ground, convert their hands and ingenuity to the fabrication of articles which may gratify and requite thoſe who are ſo employed, or who, by the diviſion of lands in the country, are entitled to the excluſive poſſeſſion of certain parts of them. By this contrivance all things proceed well. The occupier of the ground raiſes from it the utmoſt that he can procure, becauſe he is repaid for what he can ſpare by ſomething elſe which he wants, or with which he is pleaſed: the artiſt or manufacturer, though he have neither any property in the ſoil, nor any concern in its cultivation, is regularly ſupplied with the produce, becauſe he gives, in exchange for what he ſtands in need of, ſomething upon which the receiver places an equal value: and the community is kept quiet, while both ſides are engaged in their reſpective occupations.

It appears, then, that the buſineſs of one half of mankind is, to ſet the other half at work; that is, to provide articles which, by tempting the deſires, may ſtimulate the induſtry, and call forth the activity of thoſe, upon the exertion of whoſe induſtry, and the application of whoſe faculties, the production of human proviſion depends. A certain portion only of human labour is, or can be, *productive*; the reſt is *inſtrumental*—both equally neceſſary, though the one have no other object than to excite the other. It appears alſo, that it ſignifies nothing as to the main purpoſe of trade, how ſuperfluous the articles which it furniſhes are; whether the want of them be real or imaginary; whether it be founded in nature or in opinion, in faſhion, habit, or emulation; it is enough that they be actually deſired and ſought after. Flouriſhing cities are raiſed and ſupported by trading in tobacco: populous towns ſubſiſt by the manufactory of ribbons. A watch may be a very unneceſſary appendage to the dreſs of a peaſant; yet if the peaſant will till the ground in order to obtain a watch, the true deſign of trade is anſwered: and the watch-maker, while he poliſhes the caſe, or files the wheels of his machine, is contributing to the production of corn as effectually, though not ſo directly, as if he handled the ſpade, or held the plough. The uſe of tobacco has been mentioned already, not only as an acknowledged ſuperfluity, but as affording a remarkable example of the caprice of human appetite ; yet, if the fiſherman will ply his nets, or the mariner fetch rice from foreign countries, in order to procure to himſelf this indulgence, the market is ſupplied with two important articles of proviſion, by the inſtrumentality of a merchandize, which has no other apparent uſe than the gratification of a vitiated palate.

But it may come to paſs that the huſbandman, land-owner, or whoever he be that is entitled to the produce of the ſoil, will no longer exchange it for what the manufacturer has to offer. He is already ſupplied to the extent of his deſires. For inſtance, he wants no more cloth ; he will no longer therefore give the weaver corn, in return for the produce of his looms ; but he would readily give it for tea, or for wine. When the weaver finds this to be the caſe, he has nothing to do but to ſend his cloth abroad in exchange for tea or for wine, which he may barter for that proviſion which the offer of his cloth will no longer procure. The circulation is thus revived ; and the benefit of the diſcovery is, that, whereas the number of weavers, who could find ſubſiſtence from their employment, was before limited by the conſumption of cloth in the country, that number is now augmented, in proportion to the demand for tea and for wine. This is the principle of *foreign* commerce. In the magnitude and complexity of the machine, the principle of motion is ſometimes loſt or unobſerved ; but it is always ſimple and the ſame, to whatever extent it may be diverſified and enlarged in its operation.

The effect of trade upon agriculture, the proceſs of which we have been endeavouring to deſcribe, is viſible in the neighbourhood of trading towns, and in thoſe diſtricts which carry on a communication with the markets of trading towns. The huſbandmen are buſy and ſkilful ; the peaſantry laborious ; the land is managed to the beſt advantage ; and double the quantity of corn or herbage (articles which are ultimately converted into human proviſion) raiſed from it, of what the ſame ſoil yields in remoter and more neglected parts of the country. Wherever a thriving manufactory finds means to eſtabliſh itſelf, a new vegetation ſprings up around it. I believe it is true that agriculture never arrives at any conſiderable, much leſs at its higheſt degree of perfection, where it is not connected with trade, that is, where the demand for the produce is not increaſed by the conſumption of trading cities.

Let it be remembered then, that agriculture is the immediate ſource of human proviſion; that trade conduces to the production of proviſion only as it promotes agriculture; that the whole ſyſtem of commerce, vaſt and various as it is, hath no other public importance than its ſubſerviency to this end.

We return to the propoſition we laid down, "that employment univerſally promotes population." From this propoſition it follows, that the comparative utility of different branches of national commerce is meaſured by the number which each branch *employs*. Upon which principle a ſcale may eaſily be conſtructed, which ſhall aſſign to the ſeveral kinds and diviſions of foreign trade their reſpective degrees of public importance. In this ſcale the *firſt* place belongs to the exchange of wrought goods for raw materials, as of broad-cloth for raw ſilk; cutlery for wool; clocks or watches for iron, flax, or furs; becauſe this traffic provides a market for the labour that has already been expended, at the ſame time that it ſupplies materials for new induſtry. Population always flouriſhes where this ſpecies of commerce obtains to any conſiderable degree. It is the cauſe of employment, or the certain indication. As it takes off the manufactures of the country, it promotes employment; as it brings in raw materials, it ſuppoſes the exiſtence of manufactories in the country, and a demand for the article when manufactured.—The *ſecond* place is due to that commerce, which barters one ſpecies of wrought goods for another, as ſtuffs for calicoes, fuſtians for cambrics, leather for paper, or wrought goods for articles which require no farther preparation, as for wine, oil, tea, ſugar, &c. This alſo aſſiſts employment; becauſe, when the country is ſtocked with one kind of manufacture, it renews the demand by converting it into another: but it is inferior to the former, as it promotes this end by one ſide only of the bargain—by what it carries out.—The *laſt*, the loweſt, and moſt diſadvantageous ſpecies of commerce, is the exportation of raw materials in return for wrought goods: as when wool is ſent abroad to purchaſe velvets; hides or peltry to procure ſhoes, hats, or linen cloth. This trade is unfavourable to population, becauſe it leaves no room or demand for employment, either in what it takes out of the country, or in what it brings into it. Its operation on both ſides is noxious. By its exports it diminiſhes the very ſubject upon which the induſtry of the inhabitants ought to be exerciſed; by its imports it leſſens the encouragement of that induſtry, in the ſame proportion that it ſupplies the conſumption of the country with the produce of foreign labour. Of different branches of *manufactory*, thoſe are, in their nature, the moſt beneficial, in which the price of the wrought article exceeds in the higheſt proportion that of the raw material: for this exceſs meaſures the quantity of employment, or, in other words, the number of manufacturers which each branch ſuſtains. The produce of the ground is never the moſt advantageous article of foreign commerce. Under a perfect ſtate of public economy, the ſoil of the country ſhould be applied ſolely to the raiſing of proviſion for the inhabitants, and its trade be ſupplied by their induſtry. A nation will never reach its proper extent of population, ſo long as its principal commerce conſiſts in the exportation of corn or cattle, or even of wine, oil, tobacco, madder, indigo, timber; becauſe theſe laſt articles take up that ſurface which ought to be covered with the materials of human ſubſiſtence.

It muſt be here however noticed, that we have all along conſidered the inhabitants of a country as maintained by the produce of the country; and that what we have ſaid is applicable with ſtrictneſs to this ſuppoſition alone. The reaſoning, nevertheleſs, may eaſily be adapted to a different caſe; for when proviſion is not produced, but *imported*, what has been affirmed concerning proviſion, will be, in a great meaſure, true of that article, whether it be money, produce, or labour, which is exchanged for proviſion. Thus, when the Dutch raiſe madder, and exchange it for corn; or when the people of America plant tobacco, and ſend it to Europe for cloth; the cultivation of madder and tobacco becomes as neceſſary to the ſubſiſtence of the inhabitants, and by conſequence will affect the ſtate of population in theſe countries as ſenſibly, as the actual production of food, or the manufactory of raiment. In like manner, when the ſame inhabitants of Holland earn money by the carriage of the produce of one country to another, and with that money purchaſe the proviſion from abroad which their own land is not extenſive enough to ſupply, the increaſe or decline of this carrying trade will influence the numbers of the people no leſs than ſimilar changes would do in the cultivation of the ſoil.

The few principles already eſtabliſhed will enable us to deſcribe the effects upon population which may be expected from the following important articles of national conduct and economy.

I. EMIGRATION. *Emigration* may be either the overflowing of a country, or the deſertion. As the increaſe of the ſpecies is indefinite; and the number of inhabitants, which any given tract of ſurface can ſupport, finite; it is evident that great numbers may be conſtantly leaving a country, and yet the country remain conſtantly full. Or whatever be the cauſe which invincibly limits the population of a country, when the number of the people has arrived at that limit, the progreſs of generation, beſide continuing the ſucceſſion, will ſupply multitudes for foreign emigration. In theſe two caſes emigration neither indicates any political decay, nor in truth diminiſhes the number of the people; nor ought to be prohibited or diſcouraged. But emigrants may relinquiſh their country from a ſenſe of inſecurity, oppreſſion, annoyance, and inconveniency. Neither, again, *here* is it emigration which waſtes the people, but the evils that occaſion it. It would be in vain, if it were practicable, to confine the inhabitants at home; for the ſame cauſes which drive them out of the country, would prevent their multiplication if they remained in it. Laſtly, men may be tempted to change their ſituation by the allurement of a better climate, of a more refined or luxurious manner of living; by the proſpect of wealth; or, ſometimes, by the mere nominal advantage of higher wages and prices. This claſs of emigrants, with whom alone the laws can interfere with effect, will never, I think, be numerous. With the generality of a people, the attachment of mankind to their homes and country, the irkſomeneſs of ſeeking new habitations, and of living amongſt ſtrangers, will outweigh, ſo long as men poſſeſs the neceſſaries of life in ſafety, or at leaſt ſo long as they can obtain a proviſion for that mode of ſubſiſtence, which the claſs of citizens to which they belong are accuſtomed to enjoy, all the inducements that the advantages of a foreign land can offer. There appear, therefore, to be few caſes in which emigration can be prohibited with advantage to the ſtate; it appears alſo that emigration is an equivocal ſymptom, which will probably accompany the decline of the political body, but which *may* likewiſe attend a condition of perfect health and vigour.

II. COLONIZATION. The only view under which our ſubject will permit us to conſider *colonization*, is in its tendency to augment the population of the parent ſtate. Suppoſe a fertile, but empty iſland, to lie within the reach of a country, in which arts and manufactures are already eſtabliſhed; ſuppoſe a colony ſent out from ſuch a country to take poſſeſſion of the iſland, and to live there under the protection and authority of their native government; the new ſettlers will naturally convert their labour to the cultivation of the vacant ſoil, and with the produce of that ſoil, will draw a ſupply of manufactures from their countrymen at home. Whilſt the inhabitants continue few, and the lands cheap and freſh, the coloniſts will find it eaſier and more profitable to raiſe corn, or rear cattle, and with corn and cattle, to purchaſe woollen cloth, for inſtance, or linen, than to ſpin or weave theſe articles for themſelves. The mother country, meanwhile, derives from this connexion an increaſe both of proviſion and employment. It promotes at once the two great requiſites, upon which the facility of ſubſiſtence, and, by conſequence, the ſtate of population, depend, *production* and *diſtribution*, and this in a manner the moſt direct and beneficial. No ſituation can be imagined more favourable to population, than that of a country which works up goods for others, whilſt theſe others are cultivating new tracts of land for them. For as, in a genial climate, and from a freſh ſoil, the labour of one man will raiſe proviſion enough for ten, it is manifeſt that, where all are employed in agriculture, much the greater part of the produce will be ſpared from the conſumption; and that three out of four, at leaſt, of thoſe who are maintained by it, will reſide in the country which receives the redundancy. When the new country does not remit *proviſion* to the old one, the advantage is leſs; but ſtill the exportation of wrought goods, by whatever return they are paid for, advances population in that ſecondary way, in which thoſe trades promote it that are not employed in the production of proviſion. Whatever prejudice, therefore, ſome late events have excited againſt ſchemes of colonization, the ſyſtem itſelf is founded in apparent national utility; and what is more, upon principles favourable to the common intereſt of human nature: for it does not appear by what other method newly diſcovered and unfrequented countries can be peopled, or, during the infancy of their eſtabliſhment, be protected or ſupplied. The error which we of this nation at preſent lament, ſeems to have conſiſted not ſo much in the original formation of colonies, as in the ſubſequent management; in impoſing reſtrictions too rigorous, or in continuing them too long; in not perceiving the point of time when the irreſiſtible order and progreſs of human affairs demanded a change of laws and policy.

III. MONEY. Where *money* abounds, the people are generally numerous: yet gold and ſilver neither feed nor clothe mankind; nor are they in all countries converted into proviſion by purchaſing the neceſſaries of life at foreign markets; nor do they, in any country, compoſe thoſe articles of perſonal or domeſtic ornament, which certain orders of the community have learnt to regard as neceſſaries of life, and without the means of procuring which they will not enter into family eſtabliſhments—at leaſt this property of the precious metals obtains in a very ſmall degree. The effect of money upon the number of the people, though viſible to obſervation, is not explained without ſome difficulty. To underſtand this connexion properly, we muſt return to the propoſition with which we concluded our reaſoning upon the ſubject, "that population is chiefly promoted by employment." Now of employment money is partly the indication, and partly the cauſe. The only way in which money regularly and ſpontaneouſly *flows into* a country, is in return for the goods that are ſent out of it, or the work that is performed by it; and the only way in which money is *retained in* a country, is by the country ſupplying, in a great meaſure, its own conſumption of manufactures. Conſequently, the quantity of money found in a country, denotes the amount of labour and employment; but ſtill employment, not money, is the cauſe of population; the accumulation of money being merely a collateral effect of the ſame cauſe, or a circumſtance which accompanies the exiſtence, and meaſures the operation of that cauſe. And this is true of money only whilſt it is acquired by the induſtry of the inhabitants. The treaſures which belong to a country by the poſſeſſion of mines, or by the exaction of tribute from foreign dependencies, afford no concluſion concerning the ſtate of population. The influx from theſe ſources may be immenſe, and yet the country remain poor and ill peopled; of which we ſee an egregious example in the condition of Spain, ſince the acquiſition of its South American dominions.

But, ſecondly, money may become alſo a real and an operative *cauſe* of population, by acting as a ſtimulus to induſtry, and by facilitating the means of ſubſiſtence. The eaſe of ſubſiſtence, and the encouragement of induſtry, depend neither upon the price of labour, nor upon the price of proviſion, but upon the proportion which the one bears to the other. Now the influx of money into a country naturally tends to advance this proportion; that is, every freſh acceſſion of money raiſes the price of labour before it raiſes the price of proviſion. When money is brought from abroad, the perſons, be they who will, into whoſe hands it firſt arrives, do not buy up proviſion with it, but apply it to the purchaſe and payment of labour. If the ſtate receives it, the ſtate diſpenſes what it receives amongſt ſoldiers, ſailors, artificers, engineers, ſhipwrights, workmen: if private perſons bring home treaſures of gold and ſilver, they uſually expend them in the building of houſes, the improvement of eſtates, the purchaſe of furniture, dreſs, equipage, in articles of luxury or ſplendor: if the merchant be enriched by returns of his foreign commerce, he applies his increaſed capital to the enlargement of his buſineſs at home. The money ere long comes to market for proviſion, but it comes thither through the hands of the manufacturer, the artiſt, the huſbandman and labourer. Its effect, therefore, upon the price of art and labour will *precede* its effect upon the price of proviſion; and, during the interval between one effect and the other, the means of ſubſiſtence will be multiplied and facilitated, as well as induſtry be excited by new rewards. When the greater plenty of money in circulation has produced an advance in the price of proviſion, correſponding to the advanced price of labour, its effect ceaſes. The labourer no longer gains any thing by the increaſe of his wages. It is not, therefore, the quantity of ſpecie collected into a country, but the continual increaſe of that quantity, from which the advantage ariſes to employment and population. It is only the *acceſſion* of money which produces the effect, and it is only by money conſtantly flowing into a country that the effect can be conſtant. Now whatever conſequence ariſes to the country from the influx of money, the contrary may be expected to follow from the diminution of its quantity; and accordingly we find, that whatever cauſe drains off the ſpecie of a country, faſter than the ſtreams which feed it can ſupply, not only impoveriſhes the country, but depopulates it. The knowledge and experience of this effect have given occaſion to a phraſe which occurs in almoſt every diſcourſe upon commerce or politics. The *balance of trade* with any foreign nation is ſaid to be againſt or in favour of a country, ſimply as it tends to carry money out, or to bring it in; that is, according as the price of the imports exceeds or falls ſhort of the price of the exports. So invariably is the increaſe or diminution of the ſpecie of a country regarded as a teſt of the public advantage or detriment which ariſes from any branch of its commerce.

IV. TAXATION. As *taxes* take nothing out of a country; as they do not diminiſh the public ſtock, only vary the diſtribution of it, they are not neceſſarily prejudicial to population. If the ſtate exact money from certain members of the community, ſhe diſpenſes it alſo amongſt other members of the ſame community. They who contribute to the revenue, and they who are ſupported or benefited by the expenſes of government, are to be placed one againſt the other; and whilſt what the ſubſiſtence of one part is profited by receiving, compenſates for what that of the other ſuffers by paying, the common fund of the ſociety is not leſſened. This is true: but it muſt be obſerved, that although the ſum diſtributed by the ſtate be always *equal* to the ſum collected from the people, yet the gain and loſs to the means of ſubſiſtence may be very *unequal*; and the balance will remain on the wrong or the right ſide of the account, according as the money paſſes by taxation from the induſtrious to the idle, from the many to the few, from thoſe who want to thoſe who abound, or in a contrary direction. For inſtance, a tax upon coaches, to be laid out in the repair of roads, would probably improve the population of a neighbourhood; a tax upon cottages, to be ultimately expended in the purchaſe and ſupport of coaches, would certainly diminiſh it. In like manner, a tax upon wine or tea diſtributed in bounties to fiſhermen or huſbandmen, would augment the proviſion of a country; a tax upon fiſheries and huſbandry, however indirect or concealed, to be converted, when raiſed, to the procuring of wine or tea for the idle and opulent, would naturally impair the public ſtock. The effect, therefore, of taxes upon the means of ſubſiſtence depends not ſo much upon the amount of the ſum levied, as upon the object of the tax, and the application. Taxes likewiſe may be ſo adjuſted as to conduce to the reſtraint of luxury, and the correction of vice; to the encouragement of induſtry, trade, agriculture, and marriage. Taxes, thus contrived, become rewards and penalties; not only ſources of revenue, but inſtruments of police. Vices indeed themſelves cannot be taxed without holding forth ſuch a conditional toleration of them as to deſtroy men's perception of their guilt: a tax comes to be conſidered as a commutation: the materials, however, and incentives of vice may. Although, for inſtance, drunkenneſs would be, on this account, an unfit object of taxation, yet public houſes and ſpirituous liquors are very properly ſubjected to heavy impoſts.

Nevertheleſs, although it may be true that taxes cannot be pronounced to be detrimental to population, by any abſolute neceſſity in their nature; and though, under ſome modifications, and when urged only to a certain extent, they may even operate in favour of it; yet it will be found, in a great plurality of inſtances, that their tendency is noxious. Let it be ſuppoſed that nine families inhabit a neighbourhood, each poſſeſſing barely the means of ſubſiſtence, or of that mode of ſubſiſtence which cuſtom hath eſtabliſhed amongſt them; let a tenth family be quartered upon theſe, to be ſupported by a tax raiſed from the nine; or rather, let one of the nine have his income augmented by a ſimilar deduction from the incomes of the reſt; in either of theſe caſes, it is evident that the whole diſtrict would be broken up. For as the entire income of each is ſuppoſed to be barely ſufficient for the eſtabliſhment which it maintains, a deduction of any part deſtroys that eſtabliſhment. Now it is no anſwer to this objection, it is no apology for the grievance, to ſay, that nothing is taken out of the neighbourhood; that the ſtock is not diminiſhed: the miſchief is done by deranging the diſtribution. Nor, again, is the luxury of one family, or even the maintenance of an additional family, a recompenſe to the country for the ruin of nine others. Nor, laſtly, will it alter the effect, though it may conceal the cauſe, that the contribution, inſtead of being levied directly upon each day's wages, is mixed up in the price of ſome article of conſtant uſe and conſumption, as in a tax upon candles, malt, leather, or fuel. This example illuſtrates the tendency of taxes to obſtruct ſubſiſtence; and the minuteſt degree of this obſtruction will be felt in the formation of families. The example, indeed, forms an extreme caſe: the evil is magnified, in order to render its operation diſtinct and viſible. In real life, families may not be broken up, or forced from their habitation, houſes be quitted, or countries ſuddenly deſerted, in conſequence of any new impoſition whatever; but marriages will become gradually leſs frequent.

It ſeems neceſſary, however, to diſtinguiſh between the operation of a new tax, and the effect of taxes which have been long eſtabliſhed. In the courſe of circulation the money may flow back to the hands from which it was taken. The proportion between the ſupply and the expenſe of ſubſiſtence, which had been diſturbed by the tax, may at length recover itſelf again. In the inſtance juſt now ſtated, the addition of a tenth family to the neighbourhood, or the enlarged expenſes of one of the nine, may, in ſome ſhape or other, ſo advance the profits, or increaſe the employment of the reſt, as to make full reſtitution for the ſhare of their property of which it deprives them; or, what is more likely to happen, a reduction may take place in their mode of living, ſuited to the abridgment of their incomes. Yet ſtill the ultimate and permanent effect of taxation, though diſtinguiſhable from the impreſſion of a new tax, is generally adverſe to population. The *proportion* above ſpoken of, can only be reſtored by one ſide or other of the following alternative: by the people either contracting their wants, which at the ſame time diminiſhes conſumption and employment; or by raiſing the price of labour, which neceſſarily adding to the price of the productions and manufactures of the country, checks their ſale at foreign markets. A nation which is burthened with taxes, muſt always be underſold by a nation which is free from them, unleſs the difference be made up by ſome ſingular advantage of climate, ſoil, ſkill, or induſtry. This quality belongs to all taxes which affect the maſs of the community, even when impoſed upon the propereſt objects, and applied to the faireſt purpoſes. But abuſes are inſeparable from the diſpoſal of public money. As governments are uſually adminiſtered, the produce of public taxes is expended upon a train of gentry, in the maintaining of pomp, or in the purchaſe of influence. The converſion of property, which taxes effectuate, when they are employed in this manner, is attended with obvious evils. It takes from the induſtrious to give to the idle; it increaſes the number of the latter; it tends to accumulation; it ſacrifices the conveniency of many to the luxury of a few; it makes no return to the people, from whom the tax is drawn, that is ſatisfactory or intelligible; it encourages no activity which is uſeful or productive.

The ſum to be raiſed being ſettled, a wiſe ſtateſman will contrive his taxes principally with a view to their effect upon *population*; that is, he will ſo adjuſt them, as to give the leaſt poſſible obſtruction to thoſe means of ſubſiſtence by which the maſs of the community is maintained. We are accuſtomed to an opinion, that a tax, to be juſt, ought to be accurately proportioned to the circumſtances of the perſons who pay it. But upon what, it might be aſked, is this opinion founded; unleſs it could be ſhown that ſuch a proportion interferes the leaſt with the general conveniency of ſubſiſtence? Whereas I ſhould rather believe, that a tax, conſtructed with a view to that conveniency, ought to riſe upon the different claſſes of the community, in a much higher ratio than the ſimple proportion of their incomes. The point to be regarded, is not what men have, but what they can ſpare; and it is evident that a man who poſſeſſes a thouſand pounds a year, can more eaſily give up a hundred, than a man with a hundred pounds a year can part with ten; that is, thoſe habits of life which are reaſonable and innocent, and upon the ability to continue which the formation of families depends, will be much leſs affected by the one deduction than the other: it is ſtill more evident, that a man of a hundred pounds a year would not be ſo much diſtreſſed in his ſubſiſtence, by a demand from him of ten pounds, as a man of ten pounds a year would be by the loſs of one: to which we muſt add, that the population of every country being repleniſhed by the marriages of the loweſt ranks of the ſociety, their accommodation and relief become of more importance to the ſtate, than the conveniency of any higher but leſs numerous order of its citizens. But whatever be the proportion which public expediency directs, whether the ſimple, the duplicate, or any higher or intermediate proportion of men's incomes, it can never be attained by any *ſingle* tax; as no ſingle object of taxation can be found, which meaſures the ability of the ſubject with ſufficient generality and exactneſs. It is only by a ſyſtem and variety of taxes mutually balancing and equalizing one another, that a due proportion can be preſerved. For inſtance, if a tax upon lands preſs with greater hardſhip upon thoſe who live in the country, it may be properly counterpoiſed by a tax upon the rent of houſes, which will affect principally the inhabitants of large towns. Diſtinctions may alſo be framed in ſome taxes, which ſhall allow abatements or exemptions to married perſons; to the parents of a certain number of legitimate children; to improvers of the ſoil; to particular modes of cultivation, as to tillage in preference to paſturage; and in general to that induſtry which is immediately *productive*, in preference to that which is only *inſtrumental*: but, above all, which may leave the heavieſt part of the burthen upon the methods, whatever they be, of acquiring wealth without induſtry, or even of ſubſiſting in idleneſs.

V. EXPORTATION OF BREAD-CORN. Nothing ſeems to have a more poſitive tendency to reduce the number of the people, than the ſending abroad part of the proviſion by which they are maintained; yet this has been the policy of legiſlators very ſtudious of the improvement of their country. In order to reconcile ourſelves to a practice, which appears to militate with the chief intereſt, that is, with the population of the country that adopts it, we muſt be reminded of a maxim which belongs to the productions both of nature and art, "that it is impoſſible to have enough without a ſuperfluity." The point of ſufficiency cannot, in any caſe, be ſo exactly hit upon, as to have nothing to ſpare, yet never to want. This is peculiarly true of bread-corn, of which the annual increaſe is extremely variable. As it is neceſſary that the crop be adequate to the conſumption in a year of ſcarcity, it muſt, of conſequence, greatly exceed it in a year of plenty. A redundancy therefore will occaſionally ariſe from the very care that is taken to ſecure the people againſt the danger of want; and it is manifeſt that the exportation of this redundancy ſubtracts nothing from the number that can regularly be maintained by the produce of the ſoil. Moreover, as the exportation of corn, under theſe circumſtances, is attended with no direct injury to population, ſo the benefits, which indirectly ariſe to population from foreign commerce, belong to this, in common with other ſpecies of trade; together with the peculiar advantage of preſenting a conſtant incitement to the ſkill and induſtry of the huſbandman, by the promiſe of a certain ſale and an adequate price, under every contingency of ſeaſon and produce. There is another ſituation, in which corn may not only be exported, but in which the people can thrive by no other means; that is, of a newly ſettled country with a fertile ſoil. The exportation of a large proportion of the corn which a country produces, proves, it is true, that the inhabitants have not yet attained to the number which the country is capable of maintaining; but it does not prove but that they may be haſtening to this limit with the utmoſt practicable celerity, which is the perfection to be ſought for in a young eſtabliſhment. In all caſes except thoſe two, and in the former of them to any greater degree than what is neceſſary to take off occaſional redundancies, the exportation of corn is either itſelf noxious to population, or argues a defect of population ariſing from ſome other cauſe.

VI. ABRIDGMENT OF LABOUR. It has long been made a queſtion, whether thoſe mechanical contrivances, which *abridge labour*, by performing the ſame work by fewer hands, be detrimental or not to the population of a country. From what has been delivered in preceding parts of the preſent chapter, it will be evident that this queſtion is equivalent to another, whether ſuch contrivances diminiſh or not the quantity of employment. Their firſt and moſt obvious effect undoubtedly is this; becauſe if one man be made to do what three men did before, two are immediately diſcharged: but if, by ſome more general and remoter conſequence, they increaſe the demand for work, or, what is the ſame thing, prevent the diminution of that demand, in a greater proportion than they contract the number of hands by which it is performed, the quantity of employment, upon the whole, will gain an addition. Upon which principle it may be obſerved, firſtly, that whenever a mechanical invention ſucceeds in one place, it is neceſſary that it be imitated in every other where the ſame manufacture is carried on; for it is manifeſt that he, who has the benefit of a conciſer operation, will ſoon outvie and underſell a competitor who continues to uſe a more circuitous labour. It is alſo true, in the ſecond place, that whoever *firſt* diſcover or adopt a mechanical improvement, will, for ſome time, draw to themſelves an increaſe of employment; and that this preference may continue even after the improvement has become general: for, in every kind of trade, it is not only a great but permanent advantage, to have once pre-occupied the public reputation. Thirdly, after every ſuperiority which might be derived from the poſſeſſion of a ſecret has ceaſed, it may be well queſtioned, whether even then any loſs can accrue to employment. The ſame money will be ſpared to the ſame article ſtill. Wherefore, in proportion as the article can be afforded at a lower price, by reaſon of an eaſier or ſhorter proceſs in the manufacture, it will either grow into more general uſe, or an improvement will take place in the quality and fabric, which will demand a proportionable addition of hands. The number of perſons employed in the manufactory of ſtockings has not, I apprehend, decreaſed, ſince the invention of ſtocking mills. The amount of what is expended upon the article, after ſubtracting from it the price of the raw material, and conſequently what is paid for work in this branch of our manufactories, is not leſs than it was before. Goods of a finer texture are worn in the place of coarſer. This is the change which the invention has produced; and which compenſates to the manufactory for every other inconveniency. Add to which, that in the above, and in almoſt every inſtance, an improvement which conduces to the recommendation of a manufactory, either by the cheapneſs or the quality of the goods, draws up after it many dependent employments, in which no abbreviation has taken place.

From the reaſoning that has been purſued, and the various conſiderations ſuggeſted in this chapter, a judgment may, in ſome ſort, be formed, how far regulations of law are in their nature capable of contributing to the ſupport and advancement of population. I ſay *how far* : for, as in many ſubjects, ſo eſpecially in thoſe which relate to commerce, to plenty, to riches, and to the number of people, more is wont to be expected from laws, than laws can do. Laws can only imperfectly reſtrain that diſſoluteneſs of manners, which, by diminiſhing the frequency of marriages, impairs the very ſource of population. Laws cannot regulate the wants of mankind, their mode of living, or their deſire of thoſe ſuperfluities which faſhion, more irreſiſtible than laws, has once introduced into general uſage ; or in other words, has erected into neceſſaries of life. Laws cannot induce men to enter into marriages, when the expenſes of a family muſt deprive them of that ſyſtem of accommodation to which they have habituated their expectations. Laws, by their protection, by aſſuring to the labourer the fruit and profit of his labour, may help to make a people induſtrious ; but, without induſtry, the laws cannot provide either ſubſiſtence or employment : laws cannot make corn grow without toil and care ; or trade flouriſh without art and diligence. In ſpite of all laws, the expert, laborious, honeſt workman will be *employed*, in preference to the lazy, the unſkilful, the fraudulent, and evaſive ; and this is not more true of two inhabitants of the ſame village, than it is of the people of two different countries, which communicate either with each other, or with the reſt of the world. The natural baſis of trade is rivalſhip of quality and price ; or, which is the ſame thing, of ſkill and induſtry. Every attempt to *force* trade by operation of law, that is, by compelling perſons to buy goods at one market, which they can obtain cheaper and better from another, is ſure to be either eluded by the quick-ſightedneſs and inceſſant activity of private intereſt, or to be fruſtrated by retaliation. One half of the commercial laws of many ſtates are calculated merely to counteract the reſtrictions which have been impoſed by other ſtates. Perhaps the only way in which the interpoſition of law is ſalutary in trade, is in the prevention of frauds.

Next to the indiſpenſable requiſites of internal peace and ſecurity, the chief advantage which can be derived to population from the interference of law, appears to me to conſiſt in the encouragement of *agriculture*. This, at leaſt, is the direct way of increaſing the number of the people; every other mode being effectual only by its influence upon this. Now the principal expedient by which ſuch a purpoſe can be promoted, is to adjuſt the laws of property, as nearly as poſſible, to the following rules: firſt, "to give to the occupier all the power over the ſoil which is neceſſary for its perfect cultivation;" ſecondly, "to aſſign the whole profit of every improvement to the perſons by whoſe activity it is carried on." What we call property in land, as hath been obſerved above, is power over it. Now it is indifferent to the public in whoſe hands this power reſides, if it be rightly uſed: it matters not to whom the land belongs, if it be well cultivated. When we lament that great eſtates are often united in the ſame hand, or complain that one man poſſeſſes what would be ſufficient for a thouſand, we ſuffer ourſelves to be miſled by words. The owner of ten thouſand pounds a year *conſumes* little more of the produce of the ſoil than the owner of ten pounds a year. If the cultivation be equal, the eſtate, in the hands of one great lord, affords ſubſiſtence and employment to the ſame number of perſons as it would do if it were divided amongſt a hundred proprietors. In like manner we ought to judge of the effect upon the public intereſt, which may ariſe from lands being holden by the king, or by the ſubject; by private perſons, or by corporations; by laymen, or eccleſiaſtics; in fee, or for life; by virtue of office, or in right of inheritance. I do not mean that theſe varieties make no difference, but I mean that all the difference they do make reſpects the cultivation of the lands which are ſo holden.

There exiſt in this country conditions of tenure which condemn the land itſelf to perpetual ſterility. Of this kind is the right of *common*, which precludes each proprietor from the improvement, or even the convenient occupation, of his eſtate, without (what ſeldom can be obtained) the conſent of many others. This tenure is alſo uſually embarraſſed by the interference of *manerial* claims, under which it often happens that the ſurface belongs to one owner, and the ſoil to another; ſo that neither owner can ſtir a clod without the concurrence of his partner in the property. In many manors, the tenant is reſtrained from granting leaſes beyond a ſhort term of years; which renders every plan of ſolid improvement impracticable. In theſe caſes the owner wants, what the firſt rule of rational policy requires, "ſufficient power over the ſoil for its perfect cultivation." This power ought to be extended to him by ſome eaſy and general law of enfranchiſement, partition, and incloſure; which, though compulſory upon the lord, or the reſt of the tenants, whilſt it has in view the melioration of the ſoil, and tenders an equitable compenſation for every right that it takes away, is neither more arbitrary, nor more dangerous to the ſtability of property, than that which is done in the conſtruction of roads, bridges, embankments, navigable canals, and indeed in almoſt every public work, in which private owners of land are obliged to accept that price for their property which an indifferent jury may award. It may here however be proper to obſerve, that although the incloſure of waſtes and paſtures be generally beneficial to population, yet the incloſure of lands in tillage, in order to convert them into paſtures, is as generally hurtful.

But ſecondly, agriculture is diſcouraged by every conſtitution of landed property which lets in thoſe, who have no concern in the improvement, to a participation of the profit. This objection is applicable to all ſuch cuſtoms of manors as ſubject the proprietor, upon the death of the lord or tenant, or the alienation of the eſtate, to a fine apportioned to the improved value of the land. But of all inſtitutions which are in this way adverſe to cultivation and improvement, none is ſo noxious as that of *tithes*. A claimant here enters into the produce, who contributed no aſſiſtance whatever to the production. When years, perhaps, of care and toil have matured an improvement; when the huſbandman ſees new crops ripening to his ſkill and induſtry; the moment he is ready to put his ſickle to the grain, he finds himſelf compelled to divide his harveſt with a ſtranger. Tithes are a tax not only upon induſtry, but upon that induſtry, which feeds mankind; upon that ſpecies of exertion which it is the aim of all wiſe laws to cheriſh and promote; and to uphold and excite which, compoſes, as we have ſeen, the main benefit that the community receives from the whole ſyſtem of trade, and the ſucceſs of commerce. And, together with the more general inconveniency that attends the exaction of tithes, there is this additional evil, in the mode at leaſt according to which they are collected at preſent, that they operate as a bounty upon paſturage. The burthen of the tax falls with its chief, if not with its whole weight, upon tillage; that is to ſay, upon that preciſe mode of cultivation which, as hath been ſhewn above, it is the buſineſs of the ſtate to relieve and remunerate, in preference to every other. No meaſure of ſuch extenſive concern appears to me ſo practicable, nor any ſingle alteration ſo beneficial, as the converſion of tithes into corn rents. This commutation, I am convinced, might be ſo adjuſted, as to ſecure to the tithe-holder a complete and perpetual equivalent for his intereſt, and to leave to induſtry its full operation and entire reward.

Chapter XII.

OF WAR, AND OF MILITARY ESTABLISHMENTS.

BECAUSE the Chriſtian Scriptures deſcribe wars, as what they are, as crimes or judgments, ſome have been led to believe that it is unlawful for a Chriſtian to bear arms. But it ſhould be remembered, that it may be neceſſary for individuals to unite their force, and for this end to reſign themſelves to the direction of a common will; and yet it may be true that that will is often actuated by criminal motives, and often determined to deſtructive purpoſes. Hence, although the origin of wars be aſcribed in Scripture to the operation of lawleſs and malignant paſſions*; and though war itſelf be enumerated among the soreſt calamities with which a land can be viſited, the profeſſion of a ſoldier is nowhere forbidden or condemned. When the ſoldiers demanded of John the Baptiſt what they ſhould do, he ſaid unto them, "Do violence to no man, neither accuſe any falſely, and be content with your wages."† In which anſwer we do not find that, in order to prepare themſelves for the reception of the kingdom of God, it was required of ſoldiers to relinquiſh their profeſſion, but only that they ſhould beware of the vices of which that profeſſion was accuſed. The precept which follows, "Be content with your wages," ſuppoſed them to continue in their ſituation. It was of a Roman centurion that Chriſt pronounced that memorable eulogy, "I have not found ſo great faith, no not in Iſrael."‡ The firſt Gentile convert§ who was received into the Chriſtian church, and to whom the goſpel was imparted by the immediate and eſpe-

* James, iv. 1. † Luke, iii. 14. ‡ Luke, vii. 9. § Acts, x. 1.

cial direction of Heaven, held the ſame ſtation: and in the hiſtory of this tranſaction we diſcover not the ſmalleſt intimation, that Cornelius, upon becoming a Chriſtian, quitted the ſervice of the Roman legion; that his profeſſion was objected to, or his continuance in it conſidered as in any wiſe inconſiſtent with his new character.

In applying the principles of morality to the affairs of nations, the difficulty which meets us ariſes from hence, "that the particular conſequence ſometimes appears to exceed the value of the general rule." In this circumſtance is founded the only diſtinction that exiſts between the caſe of independent ſtates, and of independent individuals. In the tranſactions of private perſons, no advantage that reſults from the breach of a general law of juſtice, can compenſate to the public for the violation of the law: in the concerns of empire, this may ſometimes be doubted. Thus, that the faith of promiſes ought to be maintained, as far as is lawful, and as far as was intended by the parties, whatever inconveniency either of them may ſuffer by his fidelity, in the intercourſe of private life, is ſeldom diſputed; becauſe it is evident to almoſt every man who reflects upon the ſubject, that the common happineſs gains more by the preſervation of the rule, than it could do by the removal of the inconveniency. But when the adherence to a public treaty would enſlave a whole people, would block up ſeas, rivers, or harbours, depopulate cities, condemn fertile regions to eternal deſolation, cut off a country from its ſources of proviſion, or deprive it of thoſe commercial advantages to which its climate, produce, or ſituation naturally entitle it; the magnitude of the particular evil induces us to call in queſtion the obligation of the general rule. Moral philoſophy furniſhes no preciſe ſolution to theſe doubts. She cannot pronounce that any rule of morality is ſo rigid as to bend to no exceptions; nor, on the other hand, can ſhe compriſe theſe exceptions within any previous deſcription. She confeſſes that the obligation of every law depends upon its ultimate utility;

that this utility having a finite and determinate value, ſituations may be feigned, and conſequently may poſſibly ariſe, in which the general tendency is outweighed by the enormity of the particular miſchief: but ſhe recals, at the ſame time, to the conſideration of the inquirer, the almoſt ineſtimable importance, as of other general rules of relative juſtice, ſo eſpecially of national and perſonal fidelity; the unſeen, if not unbounded, extent of the miſchief which muſt follow from the want of it; the danger of leaving it to the ſufferer to decide upon the compariſon of particular and general conſequences; and the ſtill greater danger of ſuch deciſions being drawn into future precedents. If treaties, for inſtance, be no longer binding than whilſt they are convenient, or until the inconveniency aſcend to a certain point, which point muſt be fixed by the judgment, or rather by the feelings, of the complaining party; or if ſuch an opinion, after being authorized by a few examples, come at length to prevail; one and almoſt the only method of averting or cloſing the calamities of war, of either preventing or putting a ſtop to the deſtruction of mankind, is loſt to the world for ever. We do not ſay that no evil can exceed this, nor any poſſible advantage compenſate it; but we ſay that a loſs, which affects *all*, will ſcarcely be made up to the common ſtock of human happineſs by any benefit that can be procured to a ſingle nation, which, however reſpectable when compared with any other ſingle nation, bears an inconſiderable proportion to the whole. Theſe, however, are the principles upon which the calculation is to be formed. It is enough, in this place, to remark the cauſe which produces the heſitation that we ſometimes feel, in applying rules of perſonal probity to the conduct of nations.

As between individuals it is found impoſſible to aſcertain every duty by an immediate reference to public utility, not only becauſe ſuch reference is oftentimes too remote for the direction of private conſciences, but becauſe a multitude of caſes ariſe in which it is indifferent to the general intereſt by what rule men act, though it be abſolutely neceſſary that they act by ſome conſtant and known rule or other; and as for theſe reaſons certain poſitive conſtitutions are wont to be eſtabliſhed in every ſociety, which, when eſtabliſhed, become as obligatory as the original principles of natural juſtice themſelves; ſo, likewiſe, it is between independent communities. Together with thoſe maxims of univerſal equity which are common to ſtates and to individuals, and by which the rights and conduct of the one as well as the other ought to be adjuſted, when they fall within the ſcope and application of ſuch maxims; there exiſts alſo amongſt ſovereigns a ſyſtem of artificial juriſprudence, under the name of the *law of nations*. In this code are found the rules which determine the right to vacant or newly diſcovered countries; thoſe which relate to the protection of fugitives, the privileges of ambaſſadors, the condition and duties of neutrality, the immunities of neutral ſhips, ports, and coaſts, the diſtance from ſhore to which theſe immunities extend, the diſtinction between free and contraband goods, and a variety of ſubjects of the ſame kind. Concerning which examples, and indeed the principal part of what is called the *jus gentium*, it may be obſerved, that the rules derive their moral force, by which I mean the regard that ought to be paid to them by the conſciences of ſovereigns, not from their internal reaſonableneſs or juſtice, for many of them are perfectly arbitrary; nor yet from the authority by which they were eſtabliſhed, for the greater part have grown inſenſibly into uſage, without any public compact, formal acknowledgment, or even known original; but ſimply from the fact of their being eſtabliſhed, and the general duty of conforming to eſtabliſhed rules upon queſtions, and between parties, where nothing but poſitive regulations can prevent diſputes, and where diſputes are followed by ſuch deſtructive conſequences. The firſt of the inſtances which we have juſt now enumerated, may be ſelected for the illuſtration of this remark. The nations of Europe conſider the ſovereignty of newly diſcovered countries as belonging to the prince or ſtate whoſe ſubject makes the diſcovery; and, in purſuance of this rule, it is uſual for a navigator, who falls upon an unknown ſhore, to take poſſeſſion of it, in the name of his ſovereign at home, by erecting his ſtandard, or diſplaying his flag upon a deſart coaſt. Now nothing can be more fanciful, or leſs ſubſtantiated, by any conſiderations of reaſon or juſtice, than the right which ſuch diſcovery, or the tranſient occupation and idle ceremony that accompany it, confer upon the country of the diſcoverer. Nor can any ſtipulation be produced, by which the reſt of the world have bound themſelves to ſubmit to this pretenſion. Yet when we reflect that the claims to newly diſcovered countries can hardly be ſettled, between the different nations which frequent them, without ſome poſitive rule or other; that ſuch claims, if left unſettled, would prove ſources of ruinous and fatal contentions; that the rule already propoſed, however arbitrary, poſſeſſes one principal quality of a rule—determination and certainty; above all, that it is acquieſced in, and that no one has power to ſubſtitute another, however he might contrive a better, in its place: when we reflect upon theſe properties of the rule, or rather upon theſe conſequences of rejecting its authority, we are led to aſcribe to it the virtue and obligation of a precept of natural juſtice, becauſe we perceive in it that which is the foundation of juſtice itſelf, public importance and utility. And a prince who ſhould diſpute this rule, for the want of regularity in its formation, or of intelligible juſtice in its principle, and by ſuch diſputes ſhould diſturb the tranquillity of nations, and at the ſame time lay the foundation of future diſturbances, would be little leſs criminal than he who breaks the public peace by a violation of engagements to which he had himſelf conſented, or by an attack upon thoſe national rights which are founded immediately in the law of nature, and in the firſt perceptions of equity. The ſame thing may be repeated of the rules which the law of nations preſcribes in the other inſtances that were mentioned, namely, that the obſcurity of their origin, or the arbitrarineſs of their principle, ſubtracts nothing from the reſpect that is due to them, when once eſtabliſhed.

WAR may be conſidered with a view to its *cauſes* and to its *conduct*.

The *juſtifying* cauſes of war are deliberate invaſions of right, and the neceſſity of maintaining ſuch a balance of power amongſt neighbouring nations, as that no ſingle ſtate, or confederacy of ſtates, be ſtrong enough to overwhelm the reſt. The objects of juſt war are precaution, defence, or reparation. In a larger ſenſe, every juſt war is a *defenſive* war, inaſmuch as every juſt war ſuppoſes an injury perpetrated, attempted, or feared.

The *inſufficient* cauſes, or *unjuſtifiable* motives of war, are the family alliances, the perſonal friendſhips, or the perſonal quarrels of princes; the internal diſputes which are carried on in other nations; the juſtice of other wars; the extenſion of territory, or of trade; the misfortunes or accidental weakneſs of a neighbouring or rival nation.

There are *two* leſſons of rational and ſober policy, which, if it were poſſible to inculcate into the councils of princes, would exclude many of the motives of war, and allay that reſtleſs ambition which is conſtantly ſtirring up one part of mankind againſt another. The firſt of theſe leſſons admoniſhes princes to "place their glory and their emulation, not in extent of territory, but in raiſing the greateſt quantity of happineſs out of a given territory." The enlargement of territory by conqueſt is not only not a juſt object of war, but, in the greater part of the inſtances in which it is attempted, not even deſirable. It is certainly not deſirable where it adds nothing to the numbers, the enjoyments, or the ſecurity of the conquerors. What commonly is gained to a nation, by the annexing of new dependencies, or the ſubjugation of other countries to its dominion, but a wider frontier to defend; more interfering claims to vindicate; more quarrels, more enemies, more rebellions to encounter; a greater force to keep up by ſea and land; more ſervices to provide for, and more eſtabliſhments to pay? And, in order to draw from theſe acquiſitions ſomething that may make up for the charge of keeping them, a revenue is to be extorted, or a monopoly to be enforced and watched, at an expenſe which coſts half their produce. Thus the provinces are oppreſſed, in order to pay for being ill governed; and the original ſtate is exhauſted in maintaining a feeble authority over diſcontented ſubjects. No aſſignable portion of country is benefited by the change; and if the ſovereign appear to himſelf to be enriched or ſtrengthened, when every part of his dominion is made poorer and weaker than it was, it is probable that he is deceived by appearances. Or, were it true that the grandeur of the prince is magnified by thoſe exploits; the glory which is purchaſed, and the ambition which is gratified, by the diſtreſs of one country without adding to the happineſs of another, which at the ſame time enſlaves the new and impoveriſhes the ancient part of the empire, by whatever names it may be known or flattered, ought to be an object of univerſal execration; and oftentimes not more ſo to the vanquiſhed, than to the very people whoſe armies or whoſe treaſures have achieved the victory.

There are, indeed, two caſes in which the extenſion of territory may be of real advantage, and to both parties. The firſt is, where an empire thereby reaches to the natural boundaries which divide it from the reſt of the world. Thus we account the Britiſh Channel the natural boundary which ſeparates the nations of England and France: and if France poſſeſſed any countries on this, or England any cities or provinces on that ſide of the ſea, the recovery of ſuch towns and diſtricts to what may be called their natural ſovereign, though it may not be a juſt reaſon for commencing war, would be a proper uſe to make of victory. The other caſe is, where neighbouring ſtates, being ſeverally too ſmall and weak to defend themſelves againſt the dangers that ſurround them, can only be ſafe by a ſtrict and conſtant junction of their ſtrength : here conqueſt will effect the purpoſes of confederation and alliance ; and the union which it produces is often more cloſe and permanent than that which reſults from voluntary aſſociation. Thus, if the heptarchy had continued in England, the different kingdoms of it might have ſeparately fallen a prey to foreign invaſion : and although the intereſt and danger of one part of the iſland were in truth common to every other part, it might have been difficult to have circulated this perſuaſion amongſt independent nations ; or to have united them in any regular or ſteady oppoſition to their continental enemies, had not the valour and fortune of an enterpriſing prince incorporated the whole into a ſingle monarchy. Here the conquered gained as much by the revolution as the conquerors. In like manner, and for the ſame reaſon, when the two royal families of Spain were met together in one race of princes, and the ſeveral provinces of France had devolved into the poſſeſſion of a ſingle ſovereign, it became unſafe for the inhabitants of Great Britain any longer to remain under ſeparate governments. The union of England and Scotland, which transformed two quarrelſome neighbours into one powerful empire, and which was firſt brought about by the courſe of ſucceſſion, and afterwards completed by amicable convention, would have been a fortunate concluſion of hoſtilities, had it been effected by the operations of war. Theſe two caſes being admitted, namely, the obtaining of natural boundaries and barriers, and the including under the ſame government thoſe who have a common danger and a common enemy to guard againſt, I know not whether a third can be thought of, in which the extenſion of empire by conqueſt is uſeful even to the conquerors.

The ſecond rule of prudence which ought to be recommended to thoſe who conduct the affairs of nations, is, " never to purſue national *honour* as diſtinct from national *intereſt.*" This rule acknowledges that it is often neceſſary to aſſert the honour of a nation for the ſake of its intereſt. The ſpirit and courage of a people are ſupported by flattering their pride. Conceſſions which betray too much of fear or weakneſs, though they relate to points of mere ceremony, invite demands and attacks of more ſerious importance. Our rule allows all this; and only directs that, when points of honour become ſubjects of contention between ſovereigns, or are likely to be made the occaſions of war, they be eſtimated with a reference to utility, and not *by themſelves*. "The dignity of his crown, the honour of his flag, the glory of his arms," in the mouth of a prince are ſtately and impoſing terms; but the ideas they inſpire are inſatiable. It may be always glorious to conquer, whatever be the juſtice of the war, or the price of the victory. The dignity of a ſovereign may not permit him to recede from claims of homage and reſpect, at whatever expenſe of national peace and happineſs they are to be maintained, however unjuſt they may have been in their original, or in their continuance however uſeleſs to the poſſeſſor, or mortifying and vexatious to other ſtates. The purſuit of honour, when ſet looſe from the admonitions of prudence, becomes in kings a wild and romantic paſſion: eager to engage, and gathering fury in its progreſs, it is checked by no difficulties, repelled by no dangers; it forgets or deſpiſes thoſe conſiderations of ſafety, eaſe, wealth, and plenty, which in the eye of true public wiſdom, compoſe the objects to which the renown of arms, the fame of victory, are only inſtrumental and ſubordinate. The purſuit of intereſt, on the other hand, is a ſober principle; computes coſts and conſequences; is cautious of entering into war; ſtops in time: when regulated by thoſe univerſal maxims of relative juſtice, which belong to the affairs of communities as well as of private perſons, it is the right principle for nations to proceed by; even when it treſpaſſes upon theſe regulations, it is much leſs dangerous, becauſe much more temperate, than the other.

II. The conduct of war.—If the cauſe and end of war be juſtifiable, all the means that appear neceſſary to the end are juſtifiable alſo. This is the principle which defends thoſe extremities to which the violence of war uſually proceeds: for ſince war is a conteſt by *force* between parties who acknowledge no common ſuperior, and ſince it includes not in its idea the ſuppoſition of any convention which ſhould place limits to the operations of force, it has naturally no boundary but that in which force terminates, the deſtruction of the life againſt which the force is directed. Let it be obſerved, however, that the licenſe of war authorizes no acts of hoſtility but what are neceſſary or conducive to the end and object of the war. Gratuitous barbarities borrow no excuſe from this plea: of which kind is every cruelty and every inſult that ſerves only to exaſperate the ſufferings, or to incenſe the hatred of an enemy, without weakening his ſtrength, or in any manner tending to procure his ſubmiſſion; ſuch as the ſlaughter of captives, the ſubjecting of them to indignities or torture, the violation of women, the profanation of temples, the demolition of public buildings, libraries, ſtatues, and in general the deſtruction or defacing of works that conduce nothing to annoyance or defence. Theſe enormities are prohibited not only by the practice of civilized nations, but by the law of nature itſelf; as having no proper tendency to accelerate the termination, or accompliſh the object of the war; and as containing that which in peace and war is equally unjuſtifiable—ultimate and gratuitous miſchief.

There are other reſtrictions impoſed upon the conduct of war, not by the law of nature primarily, but by the *laws of war*, firſt, and by the law of nature as ſeconding and ratifying the laws of war. The laws of war are part of the law of nations; and founded, as to their authority, upon the ſame principle with the reſt of that code, namely, upon the fact of their being eſtabliſhed, no matter when or by whom; upon the expectation of their being mutually obſerved, in conſequence of that eſtabliſhment; and upon the general utility which reſults from ſuch obſervance. The binding force of theſe rules is the greater, becauſe the regard that is paid to them muſt be univerſal or none. The breach of the rule can only be puniſhed by the ſubverſion of the rule itſelf: on which account, the whole miſchief that enſues from the loſs of thoſe ſalutary reſtrictions which ſuch rules preſcribe, is juſtly chargeable upon the firſt aggreſſor. To this conſideration may be referred the duty of refraining in war from poiſon and from aſſaſſination.

If the law of nature ſimply be conſulted, it may be difficult to diſtinguiſh between theſe and other methods of deſtruction, which are practiſed without ſcruple by nations at war. If it be lawful to kill an enemy at all, it ſeems lawful to do ſo by one mode of death as well as by another; by a doſe of poiſon, as by the point of a ſword; by the hand of an aſſaſſin, as by the attack of an army: for if it be ſaid that one ſpecies of aſſault leaves to an enemy the power of defending himſelf againſt it, and that the other does not; it may be anſwered, that we poſſeſs at leaſt the ſame right to cut off an enemy's defence, that we have to ſeek his deſtruction. In this manner might the queſtion be debated, if there exiſted no rule or law of war upon the ſubject. But when we obſerve that ſuch practices are at preſent excluded by the uſage and opinions of civilized nations; that the firſt recourſe to them would be followed by inſtant retalliation; that the mutual licenſe which ſuch attempts muſt introduce, would fill both ſides with the miſery of continual dread and ſuſpicion, without adding to the ſtrength or ſucceſs of either; that when the example came to be more generally imitated, which it ſoon would be, after the ſentiment that condemns it had been once broken in upon, it would greatly aggravate the horrors and calamities of war, yet procure no ſuperiority to any of the nations engaged in it: when we view theſe effects, we join in the public reprobation of ſuch fatal expedients, as of the admiſſion amongſt mankind of new and enormous evils without neceſſity or advantage. The law of nature, we ſee at length, forbids theſe innovations, as ſo many tranſgreſſions of a beneficial general rule actually ſubſiſting.

The licenſe of war then acknowledges *two* limitations: it authorizes no hoſtilities which have not an apparent tendency to effectuate the object of the war; it reſpects thoſe poſitive laws which the cuſtom of nations hath ſanctified, and which, whilſt they are mutually conformed to, mitigate the calamities of war, without weakening its operations, or diminiſhing the power or ſafety of belligerent ſtates.

Long and various experience ſeems to have convinced the nations of Europe, that nothing but a *ſtanding army* can oppoſe a ſtanding army, where the numbers on each ſide bear any moderate proportion to one another. The firſt ſtanding army that appeared in Europe after the fall of the Roman legion, was that which was erected in France by Charles VII. about the middle of the fifteenth century: and that the inſtitution hath ſince become general, can only be attributed to the ſuperiority and ſucceſs which are every where obſerved to attend it. The truth is, the cloſeneſs, regularity, and quickneſs of their movements; the unreſerved, inſtantaneous, and almoſt mechanical obedience to orders; the ſenſe of perſonal honour, and the familiarity with danger, which belong to a diſciplined, veteran, and embodied ſoldiery, give ſuch firmneſs and intrepidity to their approach, ſuch weight and execution to their attack, as are not to be withſtood by looſe ranks of occaſional and newly-levied troops, who are liable by their inexperience to diſorder and confuſion, and in whom fear is conſtantly augmented by novelty and ſurpriſe. It is poſſible that a *militia*, with a great exceſs of numbers, and a ready ſupply of recruits, may ſuſtain a defenſive or a flying war againſt regular troops; it is alſo true that any ſervice, which keeps ſoldiers for a while together, and inures them by little and little to the habits of war and the dangers of action, transforms them in effect into a ſtanding army. But upon this plan it may be neceſſary for almoſt a whole nation to go out to war to repel an invader; beſide that, a people ſo unprepared muſt always have the ſeat, and with it the miſeries of war, at home, being utterly incapable of carrying their operations into a foreign country.

From the acknowledged ſuperiority of ſtanding armies, it follows, not only that it is unſafe for a nation to diſband its regular troops, whilſt neighbouring kingdoms retain theirs; but alſo that regular troops provide for the public ſervice at the leaſt poſſible expenſe. I ſuppoſe a certain quantity of military ſtrength to be neceſſary, and I ſay that a ſtanding army coſts the community leſs than any other eſtabliſhment which preſents to an enemy the ſame force. The conſtant drudgery of low employments is not only incompatible with any great degree of perfection or expertneſs in the profeſſion of a ſoldier, but the profeſſion of a ſoldier almoſt always unfits men for the buſineſs of regular occupations. Of three inhabitants of a village, it is better that one ſhould addict himſelf entirely to arms, and the other two ſtay conſtantly at home to cultivate the ground, than that all the three ſhould mix the avocations of a camp with the buſineſs of huſbandry. By the former arrangement the country gains one complete ſoldier, and two induſtrious huſbandmen; from the latter it receives three raw militia-men, who are at the ſame time three idle and profligate peaſants. It ſhould be conſidered, alſo, that the emergencies of war wait not for ſeaſons. Where there is no ſtanding army ready for immediate ſervice, it may be neceſſary to call the reaper from the fields in harveſt, or the ploughman in ſeed-time; and the proviſion of a whole year may periſh by the interruption of one month's labour. A ſtanding army, therefore, is not only a more effectual, but a cheaper method of providing for the public ſafety, than any other, becauſe it adds more than any other to the common ſtrength, and takes leſs from that which compoſes the wealth of a nation, its ſtock of productive induſtry.

There is yet another diſtinction between ſtanding armies and militias, which deſerves a more attentive conſideration than any that has been mentioned. When the ſtate relies for its defence upon a militia, it is neceſſary that arms be put into the hands of the people at large. The militia itſelf muſt be numerous, in proportion to the want or inferiority of its diſcipline, and the imbecilities or defects of its conſtitution. Moreover, as ſuch a militia muſt be ſupplied by rotation, allotment, or ſome mode of ſucceſſion whereby they who have ſerved a certain time are replaced by freſh draughts from the country, a much greater number will be inſtructed in the uſe of arms, and will have been occaſionally embodied together, than are actually employed, or than are ſuppoſed to be wanted, at the ſame time. Now what effects upon the civil condition of the country may be looked for from this general diffuſion of the military character, becomes an inquiry of great importance and delicacy. To me it appears doubtful whether any government can be long ſecure, where the people are acquainted with the uſe of arms, and accuſtomed to reſort to them. Every faction will find itſelf at the head of an army; every diſguſt will excite commotion, and every commotion become a civil war. Nothing perhaps can govern a nation of armed citizens but that which governs an army—deſpotiſm. I do not mean that a regular government would become deſpotic by training up its ſubjects to the knowledge and exerciſe of arms, but that it would ere long be forced to give way to deſpotiſm in ſome other ſhape; and that the country would be liable to what is even worſe than a ſettled and conſtitutional deſpotiſm—to perpetual rebellions, and to perpetual revolutions; to ſhort and violent uſurpations; to the ſucceſſive tyranny of governors, rendered cruel and jealous by the danger and inſtability of their ſituation.

The ſame purpoſes of ſtrength and efficacy which make a ſtanding army neceſſary at all, make it neceſſary, in mixed governments, that this army be ſubmitted to the management and direction of the prince: for however well a popular council may be qualified for the offices of legiſlation, it is altogether unfit for the conduct of war: in which, ſucceſs uſually depends upon vigour and enterprize; upon ſecrecy, diſpatch, and unanimity: upon a quick perception of opportunities, and the power of ſeizing every opportunity immediately. It is likewiſe neceſſary that the obedience of an army be as prompt and active as poſſible; for which reaſon it ought to be made an obedience of will and emulation. Upon this conſideration is founded the expediency of leaving to the prince not only the government and deſtination of the army, but the appointment and promotion of its officers: becauſe a deſign is then alone likely to be executed with zeal and fidelity, when the perſon who iſſues the order, chooſes the inſtruments, and rewards the ſervice. To which we may ſubjoin, that, in governments like ours, if the direction and *officering* of the army were placed in the hands of the democratic part of the conſtitution, this power, added to what they already poſſeſs, would ſo overbalance all that would be left of regal prerogative, that little would remain of monarchy in the conſtitution, but the name and expenſe; nor would theſe probably remain long.

Whilſt we deſcribe, however, the advantages of ſtanding armies, we muſt not conceal the danger. Theſe properties of their conſtitution—the ſoldiery being ſeparated in a great degree from the reſt of the community, their being cloſely linked amongſt themſelves by habits of ſociety and ſubordination, and the dependency of the whole chain upon the will and favour of the prince—however eſſential they may be to the purpoſes for which armies are kept up, give them an aſpect in no wiſe favourable to public liberty. The danger however is diminiſhed by maintaining, upon all occaſions, as much alliance of intereſt, and as much intercourſe of ſentiment, between the military part of the nation and the other orders of the people, as are conſiſtent with the union and diſcipline of an army. For which purpoſe officers of the army, upon whoſe diſpoſition towards the commonwealth a great deal may depend, ſhould be taken from the principal families of the country, and at the ſame time alſo be encouraged to eſtabliſh in it families of their own, as well as be admitted to ſeats in the ſenate, to hereditary diſtinctions, and to all the civil honours and privileges that are compatible with their profeſſion: which circumſtances of connexion and ſituation will give them ſuch a ſhare in the general rights of the people, and ſo engage their inclinations on the ſide of public liberty, as to afford a reaſonable ſecurity that they cannot be brought, by any promiſes of perſonal aggrandizement, to aſſiſt in the execution of meaſures which might enſlave their poſterity, their kindred, and their country.

FINIS.

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